State of New York
Court of Appeals

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NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

October 17 thru October 19, 2023

State of New York
Court of Appeals

To be argued Tuesday, October 17, 2023

No. 86 Matter of Black v New York State Tax Appeals Tribunal

Christopher Black was working as a carpenter for Nastasi & Associates (N&A) when, in 1994, he formed New England Construction Company (NECC) to gain access to state contracts as a minority business enterprise (MBE), and it soon began handling N&A's minority subcontracts. Black was the president and 51% shareholder of NECC. Anthony Nastasi took control of NECC's financial affairs in 2005, and NECC entered into an agreement with N&A providing that, upon Nastasi's written demand, Black would resign as NECC's president. Nastasi exercised his right to terminate Black as president in February 2015 and purchased his shares. Meanwhile, NECC had been incurring federal and state liability for unpaid employee withholding taxes since 2012, In early 2015 the Internal Revenue Service issued Black an assessment holding him personally liable for NECC's unpaid federal taxes, but it canceled the assessment against him on appeal, finding he was not a person responsible for paying NECC's taxes under federal law. It based its decision, in part, on sworn affidavits in which Nastasi said he himself had sole authority to pay NECC's accrued liabilities, including tax obligations, and that Black's authority over NECC's bank account was limited to paying the costs of its field operations.

In December 2015, the State Division of Taxation issued Black notices of deficiency for unpaid withholding taxes under New York's parallel delinquent tax statutes, asserting that he was a person responsible for paying NECC's taxes. Using language similar to the federal statutes, Tax Law § 685(g) provides that a person may be held personally liable for a business's tax liability if he or she is "required to collect, truthfully account for, and pay over such tax" and "willfully fails to collect ... or truthfully account for and pay over such tax." Section 685(n) states that a person responsible for paying a tax includes "an officer or employee of any corporation ... who ... is under a duty to perform the act in respect of which the violation occurs." The Tax Appeals Tribunal rejected Black's challenge to the assessment, saying it was not bound by the federal determination, and that he was responsible for the tax and willfully failed to pay it.

The Appellate Division, Third Department upheld the assessment in a 3-2 decision. It said, "Notwithstanding evidence that could support a contrary determination, it is undisputed that [Black] was president, the majority shareholder, had check signing authority, was involved in daily field operations and derived a substantial part of his income from NECC. In addition, it said Black "held himself out" to tax officials as the "responsible person for New York taxes by signing state tax returns and checks accompanying the returns" and "executing a sales tax certificate of authority listing himself as the corporation's responsible person." It further found that his failure to pay was willful. "Although [Black] might not have initially known that the taxes were not paid due to Nastasi writing and directing the checks that [he] should sign, it is undisputed that [he] became aware of the tax liabilities..., yet failed to take affirmative steps to ensure payment."

The dissenters argued the tax assessment should be annulled. While Black, "by his own account, engaged in a highly inappropriate scheme of falsely holding himself out as NECC's financial decision-maker for purposes of retaining its status as a [MBE]," they said the issue here is not the propriety of that conduct but of the determination holding him personally liable, which turns on whether he had authority over NECC's finances. They said Black "effectively ceded control of the business to Nastasi" in his 2005 agreement with N&A, and it was Nastasi, not Black, "who had significant control over NECC's finances during the tax years in question." Regarding willfulness, they said Black "had no actual authority to compel Nastasi to make the required payments once he learned that NECC was in default.... [T]he Tribunal's determination that 'petitioner's continued reliance' on Nastasi constituted willfulness is not rational, for by that point [Black] had no authority to intervene."

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For respondent Tribunal: Assistant Solicitor General Owen Demuth (518) 776-2053

State of New York
Court of Appeals

To be argued Tuesday, October 17, 2023

No. 74 People v Yoselyn Ortega

Yoselyn Ortega was a 50-year-old nanny for a Manhattan couple in October 2012 when she killed two of the children in her care, a two-year-old boy and six-year-old girl, with a kitchen knife and placed their bodies in a bathtub in the back of their Upper West Side apartment. When their mother returned home with her third child, she found her children's bodies in the tub and the nanny standing nearby. Ortega immediately stabbed herself in the neck and collapsed. She never denied that she killed the children and instead raised an insanity defense.

At trial, Ortega's counsel objected to the admission of autopsy reports on the children because they were introduced through the testimony of a medical examiner who did not conduct the autopsies, and who based her expert opinions regarding the injuries and causes of death on the autopsy findings, photographs and dictation tapes of the examiner who conducted them. Ortega argued that this violated her Sixth Amendment right to confront witnesses under the U.S. Supreme Court's 2004 decision in Crawford v Washington (541 US 36) and subsequent rulings. The trial court admitted the autopsy reports and medical examiner's testimony under the business records exception to the hearsay rule, and also rejected defense claims of alleged Miranda violations and objections to its jury charge on the insanity defense. Ortega was convicted of two counts each of first- and second-degree murder and sentenced to life without parole.

The Appellate Division, First Department dismissed the second-degree murder counts and otherwise affirmed, ruling there was no Confrontation Clause violation. The autopsy report "was not testimonial, because it '[did] not link the commission of the crime to a particular person' (People v John, 27 NY3d 294, 315 [2016]; see People v Freycinet, 11 NY3d 38, 42 [2008])," the court said. "In any event, any error was harmless.... The cause of death was undisputed. Nothing in the autopsy report had any bearing on defendant's defenses of insanity and lack of intent, and to the extent anything in it could be viewed as such, it was cumulative to evidence already before the jury...."

Ortega says federal courts, including the U.S. Court of Appeals for the Second Circuit, have held that introducing an autopsy report through testimony of a medical examiner who did not conduct the autopsy violates a defendant's right to confrontation, and she argues that this Court's conflicting decisions in John and Freycinet "must be overruled. Their consideration of whether the out-of-court statement 'link[s] the commission of the crime to a particular person' is, as the Second Circuit recently held in Garlick [v Lee (1 F4th 122 [2021])] inconsistent with established Supreme Court law." She says her "right to confront the maker of the autopsy report ... was not satisfied by calling a surrogate witness who provided expert opinions based on the factual findings of the absent doctor." She also raises other arguments for reversal.

For appellant Ortega: Abigail Everett, Manhattan (212) 577-2523 ext 508
For respondent: Manhattan D.A. Senior Appellate Counsel Dana Poole (212) 335-9000

State of New York
Court of Appeals

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To be argued Tuesday, October 17, 2023

No. 75 People v Donna Jordan

Donna Jordan was accused of robbing a Queens party store in April 2017. The store owner, who identified Jordan at trial, said Jordan and a female accomplice chatted with her for a few minutes then grabbed cash from the register and, after a struggle with the owner, fled to a waiting car. Jordan told police officers after her arrest that she had driven two friends, "Eleshia Redfern" and "Nina," to the vicinity of the store, but said she did not leave the car and said the other women robbed the store without her knowledge.

At trial, a criminalist from the city's Office of the Chief Medical Examiner testified that Jordan was the "major contributor" to DNA found on a cell phone that was left behind at the crime scene. Jordan objected to admission of the DNA lab report and criminalist's testimony, arguing that it would violate her Sixth Amendment right to confront witnesses because the criminalist did not perform the DNA tests himself. The trial court allowed the criminalist to testify that he made his own "independent interpretation of the testing data" and based his conclusions on his own analysis. To explain the presence of her DNA, Jordan testified she had been using Redfern's phone on the day of the robbery because she had lost her own. She also sought to introduce New York Police Department records of Redfern – including photos, physical description and pedigree information – to show that Redfern was an actual person who more closely matched the initial description provided by the store owner. The court admitted a photo, but precluded the other information because it would reveal that Redfern had a criminal history, which would be prejudicial to the prosecution. During summation, the prosecutor told the jury that Jordan had "created a person," suggesting she had fabricated Redfern. The court denied Jordan's mistrial motion based on prosecutorial misconduct. She was convicted of second-degree robbery and petit larceny and was sentenced to five years in prison.

The Appellate Division, Second Department affirmed, saying the trial court "properly precluded evidence of third-party culpability," Redfern's police records. "The evidence did not sufficiently connect the third party to the crimes to overcome the risk of prejudice, or the risk that the evidence would mislead the jury...." It further found that "many of the prosecutor's summation remarks ... were proper, as they were within the broad bounds of permissible rhetorical comment or fair comment on the evidence.... To the extent that some of the prosecutor's remarks were improper, those remarks were not so flagrant or pervasive as to have deprived the defendant of a fair trial...." It ruled there was no Sixth Amendment violation. "The criminalist performed his own analysis of the DNA profiles and concluded that it was approximately 25.7 quadrillion times more likely that DNA recovered" from the phone "belonged to the defendant, rather than an unknown person, and this testimony was subject to challenge on cross-examination."

Jordan argues that the criminalist's testimony violated her confrontation rights because "he was not adequately involved in the DNA testing to testify. He was not present for the testing itself, played no role in the critical electrophoresis stage or editing process, and provided only conclusory statements regarding his analysis." She says she was denied her right to present a defense by the preclusion of "certified NYPD records establishing that Redfern existed and fit the height description of the perpetrator." She also argues the prosecutor committed misconduct. "Seizing upon the evidentiary rulings, with knowledge that Redfern was a real person whom appellant had consistently maintained was the robber, the prosecutor argued in summation that Redfern did not exist, appellant 'created' her, and she tailored her 'ridiculous' testimony to the People's case." She says "the prosecutor advanced a false position to the jury in reliance on evidence he successfully suppressed."

For appellant Jordan: Sarah B. Cohen, Manhattan (212) 693-0085
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State of New York
Court of Appeals

To be argued Tuesday, October 17, 2023

No. 76 People v Jorge Espinosa

Jorge Espinosa was charged with breaking into an occupied second-floor apartment in Queens in 2013. He ran from the apartment when a resident confronted his accomplice and another resident saw him as he fled the building, but neither of them could identify him because he wore a ski mask. Investigating officers found a large screwdriver on the ground beneath the apartment's balcony, where a door had been pried open to gain entry. They obtained a DNA sample from the screwdriver and sent it to the Office of the Chief Medical Examiner (OCME) for analysis. Espinosa was arrested for the burglary after analysts matched the DNA from the screwdriver to his genetic profile, which had been added to the OCME's database after his arrest in a previous criminal case.

At trial, the DNA match was the only evidence linking Espinosa to the burglary. The lab reports analyzing the sample from the screwdriver and the profile in the database were introduced through the testimony of a supervising criminalist from the OCME, who said the analyst who tested the screwdriver sample had left the agency and was unavailable to testify. He said he had supervised the analyst and looked through the testing and results to make sure it was "scientifically sound and based on policies and procedures," but conceded on cross-examination that he did not conduct any of the testing and only read the analyst's reports. Espinosa's counsel argued in summation that the jury should discredit the testimony for that reason, but did not object to the admission of the DNA reports or the criminalist's testimony. Espinosa was convicted of second-degree burglary and related crimes and was sentenced to 15 years in prison. He argued on appeal that the DNA evidence was admitted in violation of his right to confrontation and that his attorney was ineffective in failing to object to it on that ground.

The Appellate Division, Second Department affirmed, saying his Confrontation Clause claim was unpreserved because defense counsel did not object to admission of the DNA evidence through testimony of a criminalist who did not perform the tests. "In any event," it said, the claim "is without merit.... 'The testifying criminalist performed a technical review of the analyst's report, independently reviewed the analyst's data interpretation, and reached an independent conclusion, and thus, was not merely "functioning as a conduit for the conclusions of others"'...." It found that Espinosa "was not deprived of the effective assistance of counsel...."

Espinosa argues that he "was denied the effective assistance of counsel when his attorney failed to object to the DNA evidence at the heart of the prosecution's case, which was admitted in violation of the Confrontation Clause through a criminalist who did not perform or witness the DNA testing ot apply any independent analysis to the raw data." He says, "Without the DNA evidence, and in the absence of any statements by appellant or eyewitnesses identifying him, the prosecution would have no way of proving beyond a reasonable doubt that the fleeing man was appellant.... [B]y failing to make any objection to the DNA evidence, counsel forfeited the Confrontation Clause issue with no conceivable strategic purpose."

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For respondent: Queens Assistant District Attorney Amanda Iannuzzi (718) 286-6709

State of New York
Court of Appeals

To be argued Wednesday, October 18, 2023

No. 77 Brettler v Allianz Life Insurance Company of North America

In this federal case, the parties contest the current validity of an $8 million life insurance policy issued in 2008 by Allianz Life Insurance Company of North America to the Zupnick Family Trust 2008A to insure the life of Dora Zupnick of Brooklyn. A policy provision governing assignments states that the owner "may assign or transfer all or specific ownership rights of this policy. An assignment will be effective upon Notice." The policy defines "Notice" as the receipt by Allianz "of a satisfactory written request."

The Zupnick Trust sold the policy to Miryam Muschel in April 2012, and the Trust gave Allianz written notice of the assignment. A year later, Muschel decided she no longer wanted to own the policy and pay the premiums. In May 2013, the Trust resumed paying the premiums on the understanding with Muschel that the policy would eventually be transferred back to the Trust, but Allianz was not notified of any assignment from Muschel to the Trust. On May 4, 2013, Allianz sent Muschel a grace period notice stating that $117,811 in premiums was due by June 8, or the policy would lapse. The Trust sent Allianz a check for that amount on June 7, but the bank dishonored the check. The bank subsequently notified Allianz that the check should have been honored and its failure to do so "was a bank error," and the Trust offered a replacement check, but Allianz declared the policy lapsed for nonpayment. In May 2016, Muschel and the Trust executed an agreement to transfer the policy back to the Trust, but Allianz was not notified of the assignment until September 2016, when Herman Brettler filed this suit in his capacity as trustee of the Zupnick Trust, seeking a declaratory judgment that the policy remained in full force.

U.S. District Court granted Allianz's motion to dismiss the suit for lack of standing "because, under New York law, '[o]nly the policy owner has standing to sue based on an insurance policy.'" It rejected Brettler's argument that the Trust owned the policy because Allianz received and retained premium payments from the Trust, rather than Muschel, which put Allianz on notice of the transfer. The court said there was no indication that the Trust's checks "in any way requested reassignment of the policy.... The checks, consequently, failed to provide actual, much less contractually adequate notice. Therefore, as of the commencement of this action, the Trust did not own the policy and lacked a right to sue under New York law."

The U.S. Court of Appeals for the Second Circuit is asking this Court to resolve the key issue in the case by answering a certified question: "Where a life insurance policy provides that 'assignment will be effective upon Notice' in writing to the insurer, does the failure to provide such written notice void the assignment so that the purported assignee does not have contractual standing to bring a claim under the Policy?"

For appellant Brettler: David Benhaim, Kew Gardens (212) 981-8440
For respondent Allianz: Aaron Van Oort, Minneapolis (612) 766-8138

State of New York
Court of Appeals

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To be argued Wednesday, October 18, 2023

No. 78 People v Lance Rodriguez

Lance Rodriguez was riding a bicycle in Far Rockaway, Queens in December 2014, when three police officers in an unmarked car pulled up beside him and called out, "Hold up, police." He continued riding and they repeated the order, which he obeyed. One of the officers later testified at a suppression hearing that Rodriguez had been riding recklessly in the middle of the street, causing two or three cars to stop or swerve to miss him. He said Rodriguez had his right hand on the handlebars and his left hand at his side holding a "bulky" object. When Rodriguez stopped, the officer said he asked him if he had anything on him, and Rodriguez said he did. The officer said he got out of the car and asked what he had, and Rodriguez replied that he had a gun in his waistband. The officer said he held up Rodriguez's arms while another officer opened his jacket and recovered a loaded handgun. Rodriguez testified at the same hearing that he had not been swerving or riding recklessly and that the only car that passed him was the police car. He said he had been holding his cell phone in his left hand, listening to music, and denied he said anything to the officers before they frisked him and found the gun.

Rodriguez moved to suppress the gun and other evidence obtained after the stop, contending the police lacked the justification required to stop him on a moving bicycle. He said it amounted to a level three forcible stop and detention under People v De Bour (40 NY2d 210), which required a "reasonable suspicion" that he had committed or was about to commit a crime. Supreme Court denied his motion, treating the encounter as a level two inquiry under De Bour, which required only that the officers have "a founded suspicion that criminal activity is afoot." Rodriguez then pled guilty to attempted criminal possession of a weapon in the second degree and was sentenced to two years in prison.

The Appellate Division, Second Department affirmed, saying, "Although the stop of a motor vehicle generally constitutes a seizure requiring reasonable suspicion that a crime has occurred..., case law has uniformly evaluated police encounters with bicyclists under the De Bour analysis applicable to pedestrians.... The Court of Appeals has held that an officer's instruction to a pedestrian to 'stop' requires only a common-law right of inquiry and does not constitute a seizure.... Supreme Court properly determined that the officer's statements to the defendant to 'hold up' constituted a level two encounter under De Bour, and that the officers were justified in making a common-law inquiry based upon their observations of the manner in which the defendant was riding his bicycle, as well as their observation of a 'bulky' object that the defendant was holding at his waistband."

Rodriguez argues, "[A]n investigative police stop of a moving bicycle should be treated the same as an equivalent police car stop, not as a pedestrian encounter. The factors that make car stops De Bour Level 3 seizures – such [as] the anxiety created, the requirement of submission to authority, and the intrusive interference with the momentum and path of a vehicle – apply with equal force to police stops of moving bicycles, but not to police-pedestrian encounters. New York's Vehicle and Traffic Law also treats bicyclists more like motorists than pedestrians ... and other jurisdictions have already recognized police bicycle stops as akin to car stops...."

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For respondent: Queens Assistant District Attorney Mariana Zelig (718) 286-5888

State of New York
Court of Appeals

To be argued Wednesday, October 18, 2023

No. 81 Matter of Rochester Police Locust Club, Inc. v City of Rochester

The Rochester City Council is attempting to reinstate a 2019 City Charter amendment that created a civilian-controlled Police Accountability Board to investigate and resolve misconduct complaints against city police officers and to impose penalties without regard to negotiated disciplinary procedures in the collective bargaining agreement between the city and the police union, the Rochester Police Locust Club. The union brought this action for a declaration that the amendment was invalid and unenforceable because it violates the collective bargaining requirements of the Taylor Law. The lower courts ruled for the union.

The Second Class Cities Law (SCCL) created a standard charter for Rochester and other cities of similar size in 1907, including provisions giving local officials control over police discipline. In 1967, the State Legislature amended the Civil Service Law to enact the Taylor Law, which requires collective bargaining over "the terms and conditions of employment" for public employees and over "the determination of, and administration of grievances," but Rochester's 1907 charter provisions giving city officials control of police discipline had grandfathered status as preexisting law and exempted the city from the new bargaining requirement. In 1985 the City Council repealed the police discipline provisions of the charter "for the reason that this subject matter is covered in the Civil Service Law," and the city began negotiating the terms of police discipline with the union. The 2019 charter amendment creating the Police Accountability Board was approved in a public referendum, with 75 percent of the votes cast in favor of it, but without any negotiation with the union.

Supreme Court ruled the 2019 charter provision establishing civilian control of police discipline was invalid because it conflicted with the Taylor Law's bargaining requirement. "Until 1985, the City of Rochester unquestionably possessed unfettered, exclusive authority to regulate matters of police discipline" under its 1907 charter, "and the City's authority was 'grandfathered' in...," it said. "However, in 1985, the City Council explicitly submitted [police] discipline matters to state law when it repealed the police discipline portion" of the 1907 charter. "This ended the City's 'grandfather' exemption" and made it subject to mandatory bargaining. The court said it could find no legal precedent "supporting the proposition that, once a local authority deliberately abdicated its 'grandfathered' status, it can revive that status decades later."

The Appellate Division, Fourth Department affirmed the ruling. It said "the preexisting law in question must be 'in force' when the municipality refuses to collectively bargain over police discipline" and Rochester's 1907 charter provision was no longer "in force" after the City Council repealed it in 1985 and "explicitly surrendered its grandfathered prerogative to exempt police discipline from collective bargaining.... [T]he City Council's 1985 decision to repeal the 1907 provision simply cannot be undone in the manner attempted in 2019."

The Council argues that the 1907 charter established a State policy to delegate control of police discipline to City officials, and because the State has never reversed that policy, it remains in force and the City is not subject to mandatory bargaining over police discipline. It says "Rochester lacked both the power and the intent to nullify the 1907 policy of the State by Local Law" because "the Municipal Home Rule Law, and the doctrine of preemption, forbid municipalities from nullifying the Legislature's policy judgments, including those expressed in the 1907 Charter." It says the charter prohibits, rather than exempts, the City from bargaining over police discipline.

For appellant City Council: Andrew G. Celli, Jr., Manhattan (212) 763-5000
For respondent Police Locust Club (union): Daniel P. DeBolt, Rochester (585) 454-2181

State of New York
Court of Appeals

To be argued Thursday, October 19, 2023

No. 82 Police Benevolent Association of the City of New York v City of New York

The Police Benevolent Association of the City of New York (PBA) and 16 other police unions filed this suit against New York City to challenge the validity of Administrative Code § 10-181, enacted in 2020, which made it a misdemeanor to use certain dangerous restraints during arrests. The statute provides, "No person shall restrain an individual in a manner that restricts the flow of air or blood by compressing the windpipe or the carotid arteries on each side of the neck, or sitting, kneeling, or standing on the chest or back in a manner that compresses the diaphragm, in the course of effecting or attempting to effect an arrest." The police unions argued that the statute, particularly the diaphragm compression ban, is unconstitutionally vague and that it is preempted by state criminal laws.

Supreme Court ruled the entire statute was void and unenforceable, saying the plaintiffs "have demonstrated that Section 10-181 is unconstitutionally vague as the phrase 'compresses the diaphragm' cannot be adequately defined as written." It noted the unions' argument that "an ordinary police officer will be unable to discern whether an arrestee's diaphragm is being compressed as the diaphragm is an internal muscle that contracts when air fills the lungs," and it said police department training manuals "do not meaningfully explain.... While the submitted training materials recite the text of the statute and give guidance on the location and function of the diaphragm, none give any guidance on the meaning of 'compresses the diaphragm.' There is no substance and the issue itself is simply ignored. As such, plaintiffs have established that the words 'compresses the diaphragm' are impermissibly vague." It refused to sever that portion of the statute from the chokehold ban, which the unions did not suggest was vague. Rejecting the unions' preemption claim, it said "there is nothing in the legislative history which indicates that the state legislature intended to preempt other legislative remedies."

The Appellate Division, First Department reversed and declared the statute constitutional. "The diaphragm compression ban is sufficiently definite to give notice of the prohibited conduct and does not lack objective standards or create the potential for arbitrary or discriminatory enforcement...," it said. "The only language plaintiffs take issue with is 'in a manner that compresses the diaphragm.' But the meaning of this language ... is sufficiently definite 'when measured by common understanding and practices....' [E]ven plaintiffs have no difficulty understanding the meaning of the word 'compress[]' when used in the context of the accompanying chokehold ban, which they do not challenge.... Purely accidental conduct (such as falling on top of someone) would never result in conviction since criminal liability always requires a 'voluntary act'.... A justification defense would also be available...." While "the impact on the diaphragm may be impossible to assess precisely," it said, "A trained police officer will be able to tell when the pressure he is exerting on a person's chest or back, in the vicinity of the diaphragm, is making it hard for the person to breathe, just as a driver should be able to tell when the amount of alcohol he consumed is making it unsafe for him or her to drive...." It agreed with the lower court that the statute is not preempted by state law.

For appellant police unions: Anthony P. Coles, Manhattan (212) 335-4500
For appellant PBA: Steven A. Engel, Manhattan (212) 698-3500
For respondent City: Assistant Corporation Counsel Richard Dearing (212) 356-2317

State of New York
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To be argued Thursday, October 19, 2023

No. 83 People v Marcus Brown

Marcus Brown is appealing lower court orders requiring him to register under the Sex Offender Registration Act (SORA) based solely on his guilty plea to first-degree unlawful imprisonment, although the trial court found there was no sexual component to his crime. Correction Law § 168-a makes unlawful imprisonment a "sex offense" when the victim "is less than seventeen years old and the offender is not the parent of the victim," and no proof of sexual misconduct or motive is required. Brown contends that, without any suggestion of sexual misconduct or threat by him, subjecting him to the registration and reporting requirements of SORA and the stigma of sex offender status violates his right to due process.

In 2010, Brown and two accomplices forced their way into his aunt's apartment in Queens and robbed her at gunpoint of $1700. The aunt's 10-year-old son, Brown's cousin, was present. The intruders bound the aunt with duct tape, but did not bind the boy. Brown pled guilty to first-degree unlawful imprisonment as well as robbery, burglary and related crimes. While in prison, officials did not assign him to sex offender counseling because his case "lacked sexual motivation."

At his SORA hearing, Supreme Court rejected Brown's constitutional objection to registration based on this Court's 2009 decision in People v Knox (12 NY3d 60), which held the state could require SORA registration by persons convicted of unlawful imprisonment or kidnapping, even where the crimes had "no actual, intended or threatened sexual misconduct," because it was rationally related to the state's interest in protecting children from sex crimes. It said no exception was required for cases where "there was neither a sexual assault nor any discernible risk of one" because the Legislature "could rationally have found that the administrative burden [of identifying such cases], and the risk that some dangerous sex offenders would escape registration, justified a hard and fast rule, with no exceptions." At Brown's SORA hearing, the court said it was "constrained by state law to require Mr. Brown to register under this case law even though the court does not find him to be a sex offender and that he posed no risk of sexual threat at all." It designated him a level one offender, the lowest risk level, saying "the only motivation for this crime was to steal money from Mr. Brown's aunt. There was no sexual contact or motivation on the defendant's part at all. The child involved was not even the target of the crime, was not physically or sexually abused, not kidnapped or detained for any prolonged period of time." The Appellate Division, Second Department affirmed, citing Knox.

Brown argues, "Unlike the defendants in Knox, Mr. Brown committed a robbery where his cousin was incidentally present. His cousin was not the target of the offense, nor was he kidnapped or detained for a period of days." In view of the SORA court's "uncontested finding" that he "posed no risk of sexual threat at all," he says, "Knox's concerns about the risk of 'some dangerous sex offenders ... escap[ing] registration' do not apply. Thus, the as-applied challenge raised here stands on its own merits, separate from the as-applied challenges raised in Knox." He says "imposing SORA for a non-sexual crime involving a minor violates substantive due process because it is not rationally related to SORA's explicit purpose of protecting the public from sex offenders."

For appellant Brown: Ava C. Page, Manhattan (212) 693-0085 ext. 263
For respondent: Queens Assistant District Attorney William H. Branigan (718) 286-6652

State of New York
Court of Appeals

To be argued Thursday, October 19, 2023

No. 84 People v Tramel Cuencas

Tramel Cuencas and his brother were charged with murder, kidnapping and related crimes after Thomas Dudley, a drug dealer, was abducted from his Brooklyn home in November 2012. Dudley's body was found the next day in a park in Queens with his throat and wrists slashed. Four days later, after an eyewitness to the abduction identified Cuencas and his brother in photo arrays, a team of police officers arrived before dawn at a two-family house in Brooklyn, where the brothers were living on the ground floor, for the purpose of making a warrantless arrest. The officers knocked and a man who lived in the second-floor apartment, Kwamel Jeter, opened the door. A detective testified at a suppression hearing that when he asked for permission to enter, the man did not speak but stepped aside "and opened the door a little bit wider." Once in the vestibule, the detective said the officers saw Cuencas through the open door of his apartment and arrested him, then arrested his brother in a bedroom. Jeter appeared as a defense witness at the suppression hearing and said that as soon as he opened the door, the officers ordered him to put his hands up and pushed past him with their guns drawn. He said they did not ask for permission to enter and he gave no permission.

Supreme Court denied a defense motion to suppress incriminating statements Cuencas made and a cell phone seized after his warrantless arrest, finding the police testimony more credible than Jeter's and ruling that Jeter gave the officers "tacit consent" to enter and that he had apparent authority to do so. The court said the police, once they were inside and saw Cuencas, had probable cause to arrest him without a warrant. It did not address the claim that the police violated the defendants' right to counsel by making warrantless arrests for the specific purpose of delaying attachment of the right to counsel, which would have attached when a warrant was obtained, so they could question Cuencas and his brother without counsel present. Cuencas was convicted at trial of second-degree murder and robbery and sentenced to 25 years to life.

The Appellate Division, Second Department affirmed, saying, "[W]e discern no reason to disturb the hearing court's credibility determinations, including the factual finding that Jeter tacitly consented to the police entering the apartment where the warrantless arrest of the defendant took place.... [S]uch consent is sufficient to negate the defendant's claim" of a Fourth Amendment violation under Payton v New York (445 US 573). It left Cuencas' right to counsel claim undecided, saying, "While this issue presents what appears to be an important constitutional question of first impression, we see no viable path to resolving this question in the defendant's favor within the current framework of New York law. Although the hearing evidence fully supports the defendant's view that the police went to the subject residence with the intent of making a warrantless arrest..., New York law does not presently recognize a 'new category of Payton violations based on subjective police intent....'"

Cuencas argues the police violated his indelible right to counsel "by coming to his residence with the intention of arresting him there without an arrest warrant, despite having probable cause and time to obtain one, because appellant's right to counsel would have attached had they obtained a warrant."

For appellant Cuencas: Yvonne Shivers, Manhattan (212) 693-0085 ext. 245
For respondent: Brooklyn Assistant District Attorney Sholom J. Twersky (718) 250-3364

State of New York
Court of Appeals

To be argued Thursday, October 19, 2023

No. 27 People v Anthony Debellis

Anthony Debellis was arrested for possession of a weapon in 2018 after he was stopped by police on the Bronx River Parkway for driving with an expired car registration. The officer saw a shiny object in his hand and Debellis said it was a gun magazine, but he denied having a gun with him. The officer found a loaded pistol under the driver's seat floor mat.

Defense counsel sought to establish at trial that DeBellis's possession of the firearm was temporary and lawful based, in part, on Debellis's testimony that he had been driving to a police precinct to turn in the pistol for cash under the NYPD's gun buyback program. He also testified that his gun license had been revoked more than a year before his arrest. Defense counsel did not ask the court to instruct the jury on the defense of voluntary surrender of a firearm under Penal Law § 265.20(a)(1)(f). Supreme Court denied the defense request to charge the jury on the temporary possession defense because Debellis admitted he had owned the gun for more than a year. He was found guilty of second-degree criminal possession of a weapon and related counts.

At sentencing, defense counsel told the court Debellis had just given him a pro se motion to set aside the verdict due to ineffective assistance of counsel. When the court asked if he would adopt the pro se motion, defense counsel said he would not and declared, "I am not going to argue that I was ineffective. I think I was very effective." The court read the pro se motion into the record, denied it on the merits, and sentenced Debellis to seven years in prison.

The Appellate Division, First Department affirmed, finding Debellis was not deprived of effective assistance by "his counsel's failure to request a jury instruction on the exemption from firearms possession laws for a person who voluntarily surrenders a weapon to the police.... There was no reasonable view of the evidence that defendant's conduct satisfied the requirements of that statute...." It further found Debellis had not shown prejudice because his "actions and statements before and during his arrest, including denying having a weapon, were utterly incompatible with his incredible testimony that he happened to be stopped by the police while driving to a police station to surrender his pistol as part of a buyback program." The court also rejected Debellis's claim that his counsel created a conflict of interest by taking an adverse position on his pro se motion, saying the attorney made "a brief and conclusory remark that he believed that he had provided effective assistance. Counsel never went beyond 'defending his performance'...." It said the trial court "'readily recognized the motion's lack of merit, independently of anything said by counsel'...."

Debellis argues he was deprived of effective assistance of counsel because his attorney "conceded weapon possession before the jury but, due to ignorance of the law, failed to present the only applicable defense: voluntary surrender of a firearm under Penal Law § 265.20(a)(1)(f). Instead, counsel went all-in on a baseless temporary-and-innocent possession defense that, as the court correctly held, did not apply as a matter of law. Defense counsel's prejudicial course of conduct effectively directed a guilty verdict against his own client." He also contends his attorney created a conflict by taking an adverse position on the merits of his pro se motion when counsel said, "I think I was very effective."

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For respondent: Bronx Assistant District Attorney R. Grace Phillips (718) 664-2316