State of New York
Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

April 16 thru April 18, 2024

State of New York
Court of Appeals

To be argued Tuesday, April 16, 2024

No. 46 Matter of Timperio v Bronx-Lebanon Hospital

This workers' compensation case arose from a mass shooting at Bronx-Lebanon Hospital in June 2017, when Dr. Henry Bello, who resigned his position at the Hospital two years earlier when he was accused of sexually harassing another employee, returned to the Hospital wearing a white doctor's coat with his old identification badge and carrying an AR-15 assault rifle. He set fire to the nursing station on the 16th floor with gasoline and began shooting. He wounded Dr. Justin Timperio, a first-year resident who had never met Bello; fatally shot another doctor; and wounded a patient and four other members of the medical staff. Bello then killed himself.

Three days later, the Hospital and its workers' compensation insurer, the State Insurance Fund (SIF), filed a claim on Timperio's behalf for workers' compensation benefits for his injuries. Timperio did not authorize the claim, opposed the award of benefits, and did not cash the benefit checks that were sent to him. Instead, in 2018, Timperio filed a negligence action against the Hospital in federal district court seeking damages for his wounds. The Hospital moved to dismiss the federal suit on the ground it was barred by the exclusive remedy provision of Workers' Compensation Law (WCL) § 11. Timperio objected that his injuries were not compensable under the WCL, which would preserve his federal claim. The federal court denied the motion, finding Timperio's injuries did not arise out of and in the course of his employment because there was no evidence that the shooting originated in work-related differences, then it stayed the federal case pending completion of the workers' compensation proceedings.

The Workers' Compensation Board affirmed a determination that Timperio's injuries were compensable based on the presumption in WCL § 21(1) that a workplace assault on a claimant is "presumed to have arisen out of the employment, absent substantial evidence that the assault was motivated by purely personal animosity." The Board said, "The lack of a prior personal or professional relationship between [Timperio and Bello] does not rebut the WCL 21 presumption as there is no evidence whatsoever to support that the shooting was motivated by personal animosity.... [T]here is more than the slender nexus required between [Timperio's] employment and the assault at issue. The assault occurred while [Timperio] was working, it was perpetrated by a former employee, and the assault occurred in a non-public area of the hospital."

The Appellate Division, Third Department reversed, saying Timperio successfully rebutted the presumption of compensability because "the attack was perpetrated by an individual who was not employed by the hospital at the time of the attack (and had not worked there for over two years), was not and never was Timperio's coworker, did not know Timperio and provided no reason for the attack prior to taking his own life.... [T]here is no evidence that the attack was based upon an employment-related animus between the two individuals or that the attack had any nexus to Timperio's employment...."

The appellants argue the court misapplied long-settled law by ruling that the absence of evidence of "an employment related animus" toward Timperio rebutted the presumption, and that it will preclude future claimants from obtaining benefits for injuries that have been compensable.

For appellant WCB: Assistant Solicitor General Sarah L. Rosenbluth (716) 853-8407
For appellant Hospital and SIF: Caryn L. Lilling, Woodbury (516) 487-5800
For respondent Timperio: Arnold N. Kriss, Brooklyn (212) 577-2000

State of New York
Court of Appeals

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To be argued Tuesday, April 16, 2024

No. 47 Matter of Rawlins v Teachers' Retirement System of the City of New York

Michele Rawlins was the principal of a public school in Brooklyn in 2019. Early in the year a school cook was transferred to a different school after engaging in erratic behavior, and he twice returned and demanded to speak with Rawlins. He returned for a third time in April 2019 and asked to speak with her, saying she had his belt and wallet. Rawlins was in the cafeteria and saw the former cook arguing with a school-safety agent. She said she felt the cook was stalking her and she feared for her life. She fled from the cafeteria and the school. The police were summoned and took a report of criminal trespass, but did not arrest the cook.

Rawlins never returned to work and, instead, applied for accidental disability retirement (ADR), saying she had been "permanently psychologically disabled" by the cook's threatening behavior. In support, she submitted reports from her treating physicians, including a psychiatrist's diagnosis that she was disabled by post-traumatic stress disorder (PTSD) as a result of the April 2019 incident.

The Medical Board of the Teachers' Retirement System of the City of New York (TRS) denied her application for ADR, saying, "Purposeful conduct by coworkers giving rise to a disabling injury is not an accident within the meaning of the pension statute." Instead, it found that she "remains disabled from employment as a Principal due to Psychological illness" and awarded her the less generous benefits of ordinary disability retirement.

Rawlins brought this suit against TRS to challenge the determination as arbitrary and capricious, arguing that injuries caused by the intentional conduct of a third party are accidental for disability pension purposes. TRS responded that she was ineligible for ADR because the conduct that caused her disability was intentional and because it was a risk inherent in her job as principal, which included ensuring security at the school.

Supreme Court dismissed the suit, saying TRS had a rational basis for its determination because "New York courts have held that intentional harassment or assault by a coworker does not constitute a service-related accident."

The Appellate Division, First Department affirmed. It said, "The Medical Board rationally found that petitioner's injuries resulted not from an accident in the work setting but from '[p]urposeful conduct' by a former coworker, which 'is not an accident within the meaning of the pension statute' (see Matter of Kelly v DiNapoli, 30 NY3d 674, 681-682 [2018] ['a petitioner is entitled to accidental disability retirement benefits when the injury was caused by "a precipitating accidental event ... which was not a risk of the work performed"']])."

Rawlins argues, "The injurious event herein was a 'sudden, fortuitous mischance, out of the ordinary and injurious in impact,' occurring in the performance of petitioner's job duties, but was not a general risk of the work performed. Thus, for the fact there is no Court of Appeals rule that purposeful conduct cannot be an 'accident,' the Appellate Division erred in failing to grant ADR." She says she was not a supervisor or coworker of the cook; and she "was not trained to prepare herself or protect herself against ... a personally directed stalking event at her workplace; which is not a common event or a ... foreseeable risk of her job."

For appellant Rawlins: Chester Lukaszewski, Mineola (516) 775-4725
For respondent TRS: Assistant Corporation Counsel Janet L. Zaleon (212) 356-0860

State of New York
Court of Appeals

To be argued Tuesday, April 16, 2024

No. 48 Mulacek v ExxonMobile Corporation

This breach of contract action arises from the acquisition of InterOil Corporation, a Canadian oil and gas company, by ExxonMobile Corporation and its Canadian subsidiary in February 2017. Exxon paid InterOil's shareholders $45 per share in the transaction, and a Contingent Resource Payment (CRP) agreement provided that those shareholders would receive a second payment based on an appraisal of InterOil's oil and gas reserves in Papua New Guinea. Under the CRP agreement, InterOil shareholders became "Holders" of escrow verification receipts (EVR) evincing their rights to a share of the CRP funds. It defines "Required Holders" as the holders of more than 25% of the EVRs and it created a "Holder Committee" composed of two former InterOil directors to act as agent for the Holders. The appraisal of the New Guinea properties was completed and the CRP payments issued in September 2017. Philippe Mulacek and four other InterOil shareholders filed this action against Exxon in September 2021, alleging the company breached its obligations under the CRP agreement by manipulating the New Guinea appraisal process to reduce their payments. They sought $220 million in damages.

Supreme Court dismissed the suit based on section 8.05 of the CRP agreement, which states: "Notwithstanding anything to the contrary in this Agreement, only the Required Holders or the Holder Committee (with Required Holder approval) will have the right, on behalf of all Holders, by virtue of or under any provision of this Agreement, to institute any action or proceeding at law or in equity or in bankruptcy or otherwise upon or under or with respect to this Agreement, and no individual Holder or other group of Holders will be entitled to exercise such rights." The court said the plaintiffs lacked standing to sue under "the unambiguous terms of Section 8.05" because it "expressly prohibits individual shareholders, or small groups of shareholders such as plaintiffs, from initiating any action to enforce or challenge the CRP."

The Appellate Division, First Department affirmed on a 3-2 vote, rejecting the plaintiffs' argument that section 8.05 barred them only from bringing a class action. It said, "Critically, section 8.05's penultimate sentence not only provides that plaintiffs cannot bring a class action to challenge any aspect of the CRP agreement, but it also bars them from bringing any action or proceeding altogether. 'Notwithstanding anything to the contrary in this Agreement ... no individual Holder or other group of Holders will be entitled to exercise such rights.' Such 'rights,' written in the plural as opposed to in the singular, refer to those set out in the beginning of the sentence – namely, 'institut[ing] any action or proceeding at law or in equity or in bankruptcy or otherwise upon or under or with respect to this Agreement."

The dissenters argued the clause is ambiguous. "Here, the omission of standard 'no-action' clause language and the inclusion of the words 'on behalf of all Holders' strongly indicates that section 8.05 was intended as a limitation only on who may bring class actions 'on behalf of all Holders,' rather than a restriction on who may institute any claim at all. Indeed, section 8.05 could easily have been drafted with standard language frequently used in such contracts to provide that only the Required Holders or the Holder Committee were authorized to pursue 'any remedy with respect to' the CRPA." They said "section 8.05 does not constitute an unambiguous waiver by 'Holders' ... of their applicable fundamental, common-law right to bring ... individual claims on their own behalf."

For appellants Mulacek et al: Jenny H. Kim, Manhattan (212) 446- 2300
For respondent ExxonMobile: Andrew Ditchfield, Manhattan (212) 450-4000

State of New York
Court of Appeals

To be argued Tuesday, April 16, 2024

No. 45 Roman Catholic Diocese of Albany v Vullo

The Roman Catholic Diocese of Albany and other plaintiffs – including churches, religious orders and service organizations – brought this action to challenge regulations issued in 2017 by the state Department of Financial Services (DFS) requiring that health insurance policies in New York provide coverage for "medically necessary abortions." The regulation exempts "religious employers," as defined in regulations. The plaintiffs argued that the abortion services requirement violated their religious beliefs and impaired their right to the free exercise of religion under the Federal and New York Constitutions.

State Supreme Court dismissed the suit in 2019 based on this Court's 2006 decision in Catholic Charities of Diocese of Albany v Serio (7 NY3d 510), which rejected a similar challenge to a New York statute, the Women's Health and Wellness Act (WHWA), that required insurance policies providing prescription coverage to include "contraceptive drugs and devices," holding the WHWA was "a neutral law of general applicability." The Appellate Division, Third Department affirmed the trial court, saying "the constitutional arguments raised by plaintiffs here are the same as those raised and rejected in Catholic Charities" and "they must meet the same fate by operation of the doctrine of stare decisis." The Third Department said that, as in Catholic Charities, the regulation requiring abortion coverage "set forth a neutral directive ... to be uniformly applied without regard to religious belief or practice, except for those who qualified for a narrowly tailored religious exemption." This Court denied leave to appeal.

The U.S. Supreme Court vacated the Third Department's judgment and remanded the case "for further consideration in light of" the high court's 2021 decision in Fulton v Philadelphia (141 S Ct 1868). In Fulton, the Court ruled in favor of a Catholic foster care agency that refused to certify same-sex couples to be foster parents, holding that the anti-discrimination provision in Philadelphia's standard foster care contract was not "generally applicable" because it incorporated "a system of individual exemptions" subject to the city's sole discretion. It said, "The creation of a formal mechanism for granting exceptions renders a policy not generally applicable, regardless whether any exceptions have been given, because it 'invite[s]' the government to decide which reasons for not complying with the policy are worthy of solicitude."

On remand, the Third Department reaffirmed the dismissal of the complaint in this case, saying "Fulton did not explicitly overrule Catholic Charities. Fulton also did not revisit or overturn the existing rule 'that laws incidentally burdening religion are ordinarily not subject to strict scrutiny under the Free Exercise Clause so long as they are neutral and generally applicable,'" the standard underlying Catholic Charities and a standard that "remains good law.... Accordingly, Fulton does not bar the holding of Catholic Charities that a regulation, like the one at issue here, was neutral and generally applicable despite the presence of exemptions based upon specified criteria...."

The plaintiffs argue that, under Fulton and other recent precedents, the abortion coverage requirement "is not a neutral law of general applicability because it contains exemptions that undermine its asserted purposes. First, the Abortion Mandate contains a narrow religious exemption that covers certain religious organizations but not others.... Second, the Abortion Mandate exempts numerous employers ... and fails to ensure abortion coverage for unemployed women in the State, reflecting secular exemptions that likewise defeat the law's general applicability." This triggers strict scrutiny which the regulation would fail, they say, because "the State has other options to pursue its stated interests without burdening religious exercise."

For appellants Diocese et al: Noel J. Francisco, Washington, DC (202) 879-3939
For respondents Vullo and DFS: Assistant Solicitor General Laura Etlinger (518) 776-2028

State of New York
Court of Appeals

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To be argued Tuesday, April 16, 2024

No. 49 Eccles v Shamrock Capital Advisors, LLC

This investor dispute arises from the 2018 merger between FanDuel Ltd., an online fantasy sports company incorporated in Scotland in 2007, with Paddy Power Betfair plc, which operated a major sports gambling business in Europe. FanDuel had expanded into the American fantasy sports market in 2009 and established its headquarters in New York. In 2017, FanDuel shareholders restructured the company by collapsing its classes of stock into two categories, preferred shares and common shares, and amended its Articles of Association to provide that in the event of a merger or takeover, preferred shareholders would be compensated first for the value of their stock and common shareholders would share only in any funds that remained. Shamrock Capital Advisors and KKR & Co. between them owned 36% of the preferred shares and had the power to compel all FanDuel shareholders to submit to a proposed merger. In May 2018, just days after the U.S. Supreme Court ruled that states could legalize sports gambling, FanDuel's directors voted at a meeting in New York to proceed with the merger and resolved that FanDuel's assets were worth $465.5 million, somewhat less than the total value of its preferred shares. Shamrock and KKR assented to the merger and compelled all FanDuel shareholders to agree. As a result, the preferred shareholders received all of FanDuel's 40% share in a new sports gambling company, PandaCo, Inc., and nothing was left for the common shareholders.

Nigel John Eccles and more than 100 other common shareholders in FanDuel filed this action in Manhattan, asserting claims under New York law including breach of fiduciary duty, against Shamrock and KKR, six former members of FanDuel's board of directors (director defendants), and PandaCo and other corporations created in the wake of the merger. They claimed the defendants had schemed to ensure that preferred shareholders received all benefits of the merger by undervaluing FanDuel's assets. The defendants moved to dismiss and argued that under the internal affairs doctrine of choice of law, the laws of Scotland applied because claims arising from relations among directors and shareholders are generally governed by the law of the jurisdiction of incorporation. And under Scots law, they said, directors and shareholders owe a fiduciary duty only to the company as a whole, not to individual shareholders.

Supreme Court refused to dismiss the breach of fiduciary duty claims, ruling New York law governed the case because the internal affairs doctrine did not apply "where the defendants are not current officers, directors, and shareholders" and FanDuel was eliminated by the merger. On the merits, it said the plaintiffs adequately stated their claims under New York law.

The Appellate Division, First Department reversed and dismissed the suit under Scots law because "FanDuel is a Scottish company, incorporated in Scotland." It said "the internal affairs doctrine applies to an officer or director at the time of the conduct at issue," regardless of whether they remain in place when the suit is filed. On the merits, it said the suit should be dismissed because "Scots law states that directors generally owe fiduciary duties only to their company, not to its shareholders."

The plaintiffs argue the Appellate Division erred in applying Scots law because New York had a greater interest in and connection to the case, since FanDuel was headquartered in New York, many of the parties reside in New York, and the merger vote occurred in New York. They also argue the court erred "by determining the substance of disputed Scots law issues without discovery" or an evidentiary hearing "as required by CPLR 4511."

For appellants Eccles et al: Stephen P. Younger, Manhattan (212) 940-3000
For respondents KKR et al: Andrew J. Rossman, Manhattan (212) 849-7000
For respondents Shamrock et al: Jonathan M. Weiss, Los Angeles, CA (310) 557-2900
For respondents Cleland et al (director defendants): Mark A. Kirsch, Manhattan (212) 556-2100

State of New York
Court of Appeals

To be argued Wednesday, April 17, 2024

No. 50 People v Samual Nektalov

In March 2018, two narcotics detectives in Queens spotted a 2002 Honda with tinted windows and pulled it over. Samual Nektalov was in the front passenger seat. When one of the detectives approached the driver for his license and registration, he saw a glass jar with marijuana in the center console and arrested both men. In a pat-down of Nektalov, he recovered a ziplock bag of cocaine from his pants pocket and another from his sock. Nektalov was charged with two misdemeanor counts of drug possession. Nektalov moved to suppress the evidence, arguing that the police lacked probable cause for the traffic stop and for his arrest. At the suppression hearing, the arresting officer testified that he stopped the Honda because it was "traveling with excessively tinted windows." As for the arrest, he said the jar of marijuana was in plain view and in close proximity to Nektalov.

Criminal Court denied the suppression motion, saying, "The police are authorized to stop a vehicle which is observed committing a traffic violation and are then authorized to direct the driver and passengers to exit the detained vehicle.... Here, [the detective] properly stopped the vehicle in which defendant was a passenger because the car apparently violated Vehicle and Traffic Law (VTL) § 375(12-a)(b)(2) for having excessively tinted windows...." The statute prohibits the use of windshields and vehicle windows with "a light transmittance of less than seventy percent." The court further found that the jar of marijuana in plain sight provided the detective with probable cause to arrest and search Nektalov. He subsequently pled guilty to a class A misdemeanor possession offense and was sentenced to time served and a $250 fine.

The Appellate Term for the 2nd, 11th and 13th Judicial Districts affirmed on a 2-1 vote, saying "the credible evidence at the [suppression] hearing, where the detective testified that he stopped defendant's vehicle for having 'excessively tinted windows,' was sufficient to establish that the detective had probable cause to lawfully stop the 'vehicle due to an apparent violation of [VTL] § 375(12-a)(b)(2)'...." It said the marijuana "in plain view" and "in close proximity to" Nektalov "was sufficient to establish that the arrest was lawful."

The dissenter said the detective lacked probable cause for the traffic stop. "On this bare-bones record, the majority concludes that the vehicle was properly stopped because the car apparently violated [VTL] § 375(12-a)(b)(2). There is absolutely nothing in this record, credible or otherwise, to support that conclusion. The officer never testified as to how he came to the conclusion that the windows were excessively tinted as the officer did in Bacquie (154 AD3d 648); rather, he merely stated that they were tinted..... The uncontroverted testimony at the hearing was that the officer stopped the vehicle based solely on his whim that the vehicle had 'excessively tinted' windows.... Even if the majority concludes that the officer's testimony was credible, the record is still devoid of probable cause for the traffic stop."

For appellant Nektalov: Rachel L. Pecker, Manhattan (212) 577-3384
For respondent: Queens Assistant District Attorney Joseph M. DiPietro (718) 286-6773

State of New York
Court of Appeals

To be argued Wednesday, April 17, 2024

No. 51 People v Jason Brown

Two plainclothes officers patrolling in the Bronx in May 2017 saw the front seat passenger in a car traveling ahead of them open and close the side door once while the car was in motion. The officers activated their lights to stop the car and one of them walked up to the driver, Jason Brown, and asked where he was going. Brown said he was taking the woman in the front passenger seat to a bank to make a deposit. The officer smelled marijuana, asked Brown to step out of the car, and asked if he had "anything on him." Brown replied, "I have some E, it is my party drug," and the officer retrieved ecstasy from his jacket pocket. The officers seized marijuana and more ecstasy in a search of the car.

Charged with misdemeanor drug possession, Brown moved to suppress the evidence as the result of an illegal stop. The arresting officer testified at the hearing that he did not see Brown commit any traffic violations, but he thought it was unusual that a passenger would open the door of a moving car and he was concerned that someone might need "some sort of aid."

Criminal Court denied the suppression motion, saying "it is clear that the stop ... constituted a seizure under the Fourth Amendment. The record is further clear that at the time of the stop the defendant did not commit a traffic violation nor did the officer have a reasonable suspicion of any criminal activity. However, the stop herein was reasonable to ensure that the passenger in the moving vehicle was safe and did not need aid." The arresting officer "personally observed a passenger in the defendant's vehicle open and close the door while the vehicle was in motion. It was reasonable for the officer to be concerned for the passenger's safety and this safety concern outweighs the interference of the defendant's liberty." Brown pled guilty to a reduced charge of disorderly conduct and was given a conditional discharge.

The Appellate Term, First Department affirmed. "In these circumstances, the stop of the vehicle was justified based on considerations of public safety, even where an 'actual violation of the Vehicle and Traffic Law [is] not ... detectable,'" it said, citing People v Ingle (36 NY2d 413 [1975]), "and this safety concern outweighs the interference of defendant's liberty...."

Brown argues that his warrantless stop was an unconstitutional seizure under People v Hinshaw (35 NY3d 427 [2020]), which held, "Automobile stops are lawful only when based on probable cause that a driver has committed a traffic violation; when based on reasonable suspicion that the driver or occupants of the vehicle have committed, are committing, or are about to commit a crime; or, when conducted pursuant to nonarbitrary, nondiscriminatory, uniform traffic procedures." He says the police stop in this case was not justified under any of the Hinshaw conditions; and he argues, "When ... the police are operating in their law enforcement capacity to investigate potential criminal conduct – as they clearly were here, this Court should eschew a public service exception [to the Fourth Amendment] and adhere to its long-held rule requiring reasonable suspicion that a crime is being or has been committed."

For appellant Brown: Harold V. Ferguson Jr., Manhattan (212) 577-3548
For respondent: Bronx Assistant District Attorney Saad Siddiqui (718) 664-1513

State of New York
Court of Appeals

To be argued Wednesday, April 17, 2024

No. 52 People v Kevin L. Thomas

An off-duty Elmira police officer spotted Kevin Thomas driving his Porsche Cayenne on Interstate 81 in Pennsylvania in September 2016. The officer knew Thomas was on parole and was prohibited from leaving Chemung County without permission. He also knew Thomas was approaching his 9 pm curfew, another condition of his parole. The officer alerted an on-duty Elmira officer that Thomas was approaching the city. The second officer, Edward Linehan, waited near an off-ramp that Thomas would likely take When Thomas arrived around 9:20 pm, Linehan saw him roll through a stop sign and stopped him. Linehan ran his license and registration, which came back clean. After Thomas admitted the infraction, Linehan asked him about his curfew, whereabouts and activities, and said Thomas gave inconsistent and dishonest answers. Thomas refused to consent to a search of his car, and Linehan then requested a canine unit to conduct an exterior sniff-search of the Porsche. When he was finally informed that the unit was unavailable, he called the parole officer who supervised Thomas's case and informed him of the circumstances. The parole officer determined that Thomas had violated two conditions of his parole and went to the scene to investigate. While waiting for him to arrive, Linehan frisked Thomas and found a New York City restaurant receipt issued that day, which he gave to the parole officer. When Thomas refused to answer questions about his activities, the parole officer conducted a warrantless search of his car and found, in a closed shoebox, 2,400 packets of heroin. The traffic stop had lasted at least 40 minutes.

Thomas moved to suppress the evidence, arguing the prolonged traffic stop and vehicle search were unlawful. After County Court denied his motion, Thomas pled guilty to third-degree criminal possession of a controlled substance and was sentenced to nine years in prison.

The Appellate Division, Third Department affirmed in a 3-2 decision, saying, "To extend a stop beyond its original purpose, circumstances must arise that 'furnish the [officer] with a founded suspicion that criminal activity is afoot'.... Defendant's multiple and inconsistent explanations about his travels, which the police officers knew were false, coupled with his parole situation and his nervous demeanor throughout the encounter, combined to give the officers a founded suspicion of criminality.... As such, the police officers were authorized to extend the scope of the stop beyond its original justification by requesting consent to search defendant's vehicle and, upon denial, detaining defendant to await a canine sniff of the vehicle's exterior." When they "learned 25 to 30 minutes into the stop that the canine unit was unavailable," the officers "were permitted to continue a common-law inquiry" and their decision to call the parole officer "was within reason." It said the parole officer's "decision to search the vehicle was reasonable and substantially related to the performance of his duties."

The dissenters argued that Thomas "was detained beyond what was reasonable under the circumstances" because Linehan lacked a founded suspicion of criminality. They said the justification for the detention ended when Thomas admitted rolling through the stop sign and Linehan determined "that defendant's driving privileges were valid. In our view, once Linehan confirmed that there was nothing wrong with defendant's license or registration, all that remained at this point was for Linehan to issue a citation...." While Thomas "did give conflicting answers" and acted nervously during Linehan's continued questioning, this "came after the initial justification for stopping and detaining defendant had already dissipated.... Indeed, between the time when Linehan effectuated the traffic stop and processed defendant's license and registration, Linehan did not observe anything suspicious by defendant so as to give him founded suspicion that criminality was afoot in order to continue defendant's detention.... Accordingly, the drugs, which were discovered ... after Linehan processed defendant's license and registration, should have been suppressed."

For appellant Thomas: John B. Casey, Albany (518) 738-1800
For respondent: Chemung County Assistant District Attorney Nathan M. Bloom (607) 737-2944

State of New York
Court of Appeals

To be argued Wednesday, April 17, 2024

No. 53 People v Dominic F. Spirito

Dominic Spirito was a recently-released parolee living in Tioga County with his mother and stepfather in December 2018, when his mother called the local parole office to report that she saw a picture of Spirito with a gun, she was worried that he had one, and she gave her permission to check the house. The parole supervisor assigned Parole Officer Brian Bolden to look into the report and search the house. He was joined by three more parole officers and two sheriffs deputies. When Spirito answered the door, Bolden searched him, found a knife, and asked if he had any other weapons. Spirito said "there is a gun upstairs under the dresser." Two parole officers searched his bedroom and found an AR-15 rifle along with two extended magazines, each with a 30-round capacity, which are illegal in New York. Spirito was arrested and charged with possession of the magazines.

County Court denied his motion to suppress the illegal magazines, saying Bolden's "conduct was reasonably and rationally related to his duties as a parole officer, one of which is to make sure that the parolees he is supervising are not in possession of any guns. Additionally, the defendant had consented to the search by signing the standard conditions of parole which allowed for such searches." Spirito pled guilty to two counts of third-degree criminal possession of a weapon and was sentenced to four years in prison.

The Appellate Division, Third Department affirmed on a 4-1 vote. "The search of defendant's residence, which was based on the mother's tip, was rationally and reasonably related to the performance of the parole officer's duties...," it said. "The tip from defendant's mother was presumed reliable..., unlike that from an anonymous tipster.... As defendant and his mother resided together, had daily interaction, and the mother had knowledge of defendant's current mental health status, the tip was reliable. Although there is no evidence in the record as to when the picture of defendant was taken, defendant resided with the mother. As such, she was cognizant of her son's appearance, his attire and was capable of determining its chronology."

The dissenter said the magazines, the sole basis for the charges, should have been suppressed. "Even if I agreed with the majority that defendant's mother was reliable, the record nonetheless fails to demonstrate a sufficient basis for the mother's knowledge that defendant had a gun," she said. "In this regard, the only basis of the mother's knowledge stemmed from a photograph depicting defendant with a gun. There was no evidence, however, indicating when or where this photograph was taken. Moreover, even though the mother lived with defendant, there was no proof reflecting that the mother personally observed defendant with a gun, that she ever saw a gun in defendant's bedroom or that she otherwise had any firsthand knowledge that defendant had a gun...."

For appellant Spirito: John A. Cirando, Syracuse (315) 474-1285
For respondent: Tioga County Assistant District Attorney Cheryl Mancini (607) 687-8659

State of New York
Court of Appeals

To be argued Wednesday, April 17, 2024

No. 54 People v Eugene L. Lively

Eugene Lively was a parolee living in Watertown in February 2021, when parole officers and Watertown police officers arrived at his apartment without a warrant in search of another parolee, an absconder, who they believed was living there. Lively was handcuffed while officers searched the residence, unsuccessfully, for the absconder and a parole officer, noticing a bulge in his pocket, retrieved an ear bud container with heroin inside. He was charged with possession.

County Court denied Lively's motion to suppress the drug evidence, saying the parole officer discovered the heroin in the performance of her duties. Lively was convicted at trial of third-degree criminal possession of a controlled substance and sentenced to six years in prison.

The Appellate Division, Fourth Department affirmed in a 3-2 decision. "'A parolee's constitutional right to be secure against unreasonable searches and seizures is not violated when a parole officer conducts a warrantless search that is rationally and reasonably related to the performance of the parole officer's duties'...," the majority said. "'A parole officer's search is unlawful, however, when the parole officer is merely a conduit for doing what the police could not do otherwise'.... Here, no such improper exploitation occurred." It cited the parole officer's testimony "that the conditions of defendant's parole included a consent to searches of his person and residence; and that the unannounced home visit was prompted by a request from another parole officer to conduct the visit to look for a parole absconder who might be in defendant's residence. That conduct is unquestionably 'substantially related to the performance of [the parole officer's] duty in the particular circumstances'.... Further, there is no evidence from which to infer that the parole officers conducting the search were 'not pursuing parole-related objectives but were instead facilitating [a] police investigator's contact with defendant as part of a separate criminal investigation'...."

The dissenters said the officers were searching "defendant's home for an unidentified parolee who had apparently absconded from parole.... Importantly, there was no testimony by defendant's parole officer that the search was related to any determination that defendant violated or was violating any condition of his parole or that the parole officers were conducting an unannounced search related to defendant's status as a parolee.... Thus, there was no evidence that the decision to search defendant's residence 'was motivated ... by legitimate reasons related to <u>defendant's</u> status as a parolee'.... [W]e are unaware of any case law that stands for the proposition that a showing that a parole officer's actions were rationally related to that officer's duty to detect and prevent the parole violations of one parolee was sufficient to render a search or seizure with respect to a separate parolee reasonable." They said, "Inasmuch as the testimony ... established that the parole officers' sole purpose for entering defendant's residence was to determine whether a parole absconder was present, we conclude that the search of defendant's pocket 'was not reasonably designed to lead to evidence of a parole violation'...."

For appellant Lively: Karen G. Leslie, Riverhead (631) 727-7660
For respondent: Jefferson County Assistant District Attorney Morgan R. Mayer (315) 785-3053

State of New York
Court of Appeals

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To be argued Thursday, April 18, 2024

No. 57 People v Mark Watkins
No. 58 People v Antwyne Lucas

The appellants in these single-eyewitness cases, Black men who were convicted of attacking white complainants, argue they received ineffective assistance of counsel because their defense attorneys failed to request a jury charge on the potential fallibility of cross-racial identification. Both convictions occurred before this Court ruled in People v Boone (30 NY3d 521 [2017]) that in such disputed identification cases where "the identifying witness and defendant appear to be of different races, upon request, a party is entitled to a charge on cross-racial identification."

In No. 57, a Black man approached David Pena on a Manhattan sidewalk in October 2016. The man held what looked "like a piece of cement" in his hand and struck Pena in the left cheek with it. The men faced each other at a distance of about two car lengths for 10 or 11 seconds before the assailant walked away. Pena reported the incident to police three days later and reviewed 462 mugshots, but did not see his assailant. Mark Watkins was arrested six days after the attack, when Pena saw him smoking on the street and pointed him out as his assailant. Based almost solely on Pena's identification, Watkins was convicted of charges including second-degree assault and sentenced to 13 years in prison.

In No. 58, two Black men approached Rev. Marc Rosselli as he arrived at his Staten Island church in June 2016. Rosselli said the man in a white t-shirt pulled a gun and demanded his keys, wallet and cell phone, while the other in a dark shirt "hemmed" him in on the other side. After taking his property, the gunman knocked him to the ground and both men left in his car. Later that day, the police went to an abandoned house where they found Antwyne Lucas in a blue hoodie, Kerry Pack in a white t-shirt, and Rosselli's cell phone case. Rosselli picked Lucas out of a lineup; A detective testified at the suppression hearing that Rosselli said Lucas "could have been the one with the gun," but "he wasn't too sure." Rosselli could not identify Pack. At trial, the prosecutor argued the men acted in concert, but did not identify either one as the gunman. Rosselli testified that he picked the gunman out of the lineup, but could not identify Lucas in court. At the charge conference, Lucas's attorney requested the jury charge for one-witness identifications. The court agreed but, regarding the cross-racial portion of the charge, said "the difference in the race ... was not an issue during the trial." Lucas's attorney consented to omitting the cross-racial identification charge. Lucas was convicted of first-degree robbery and sentenced to 25 years in prison.

The Appellate Division affirmed in both cases, finding the defendants received effective assistance. The First Department said in Watkins that the claim "is unreviewable on direct appeal because it involves matters not fully explained by the record...," but in the alternative, it said Watkins "has not shown that it was objectively unreasonable for counsel to refrain from requesting a jury charge on cross-racial identification," and noted that Boone had not yet been decided.

The appellants argue their attorneys were ineffective in failing to request – or in Lucas's case, consenting to the omission of – a jury instruction on cross-racial identification. Since their primary defense was misidentification, they say there could be no reasonable strategy for failing to request the charge.

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State of New York
Court of Appeals

To be argued Thursday, April 18, 2024

No. 55 People v Freddie T. Wright

Freddie Wright was charged with holding up a Queens Taco Bell in March 2017. With a bandana over his face, he allegedly entered the restaurant with an accomplice and forced an employee to remove the cash drawers from two registers while he held a sharp object at her neck. The police arrested him a block away, hiding in a stranger's house, and held him in handcuffs for separate show-up identifications by two Taco Bell employees minutes after the robbery.

During jury selection for his trial, Wright's counsel raised Batson challenges to the prosecutor's use of peremptory strikes against two prospective jurors, C.C. and K.C., contending they were removed from the panel because they are Black. When questioned by the court, the prosecutor said she struck C.C. because he had cousins who had been arrested and because "he rents, and he has no children. He is not married." She also said she had a note that C.C. had other friends who were arrested, but that was later shown to be incorrect. Defense counsel responded "there were jurors that are on this panel that are not African American who meet every one of those criteria.... There are people who have been crime victims, people who rent." The prosecutor said she struck K.C. "because of her line of work. She works for the Department of Probation in the family court which is obviously within the legal field. And on top of it, she works for probation with juveniles. So the reason I'm using a peremptory challenge is because... I do think that sympathy might come into play for her based on her line of work." Defense counsel responded that K.C. "made it very clear that she wouldn't be sympathetic" and said, "There have been other people with law enforcement backgrounds that have not been challenged by the prosecution."

Supreme Court denied Wright's Batson challenges. He was convicted of second-degree robbery and criminal trespass, and was sentenced to 10 years in prison.

The Appellate Division, Second Department affirmed. Without addressing preservation of the Batson claims, it said Wright "failed to satisfy his burden of demonstrating, under the third prong of the Batson test, that the facially race-neutral explanation given by the prosecutor was a pretext for racial discrimination...."

Wright argues that the prosecutor's race-neutral reasons for striking the two Black jurors are unsupported by the record and clearly pretextual because other jurors in the pool who met the same criteria were not challenged or even questioned by the prosecutor. The district attorney argues that the lower courts' findings that the prosecutor did not discriminate in striking the two jurors "are fully supported by the record" and, further, argues that Wright failed to preserve the issue for appeal because, although he alleged there were "unchallenged, similarly situated non-African American jurors" in the pool, he failed to identify any of them with sufficient specificity. Wright responds that his claims were preserved by his counsel's Batson challenges making out a prima facie case of discrimination for both peremptory strikes and by his arguments that the prosecutor's reasons were pretextual. He also argues that his show-up identifications were unduly suggestive.

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For respondent: Queens Assistant District Attorney Danielle O'Boyle (718) 286-6000

State of New York
Court of Appeals

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To be argued Thursday, April 18, 2024

No. 56 People v Dwane Estwick

After a mugging in Queens in May 2015, police officers canvassed the area with a witness who had seen the perpetrator knock the victim unconscious with a brick or stone and then rifle through his pockets. About two blocks away, the witness saw Dwane Estwick standing between two houses and identified him as the assailant. Estwick was arrested in the yard behind one of the houses, and the victim's wallet was later found there.

During jury selection, Estwick's attorney raised Batson challenges to the prosecutor's use of peremptory strikes to remove four non-Caucasian women from the jury pool, saying the prosecutor "did not challenge any of the white males.... [A]ll his challenges were against women and all against women of color." The court asked the prosecutor for race- and gender-neutral reasons for striking K.S., a black woman working for the Police Department who had served on a criminal jury in Brooklyn 19 years earlier. Before receiving a response, the court said the prosecutor was "not happy with the way" she answered questions about her prior jury service and "got a bad vibe" from it, "making the People nervous about her being a juror on this case." The prosecutor did not confirm that he struck K.S. for that reason, and the court did not explain specifically what the juror said or did that might concern the prosecutor. Regarding another prospective juror, M.G., the prosecutor said he struck her because she "raised her hand and said that she would require scientific evidence" to convict. Defense counsel did not respond to the explanation. The prosecutor had offered the same reason to strike M.G. for cause, which the court rejected as unsupported by the record. The court denied Estwick's Batson challenges. He was convicted of first- and second-degree robbery and sentenced to 12 years in prison.

The Appellate Division, Second Department affirmed, saying Estwick "failed to satisfy his burden of demonstrating, under the third prong of the Batson test, that the facially race-neutral explanation given by the prosecutor was a pretext for racial discrimination...."

Estwick argues "the peremptory challenges of [K.S. and M.G.] violated the equal protection rights of both appellant and those of the stricken prospective jurors, requiring reversal and a new trial." He says "the prosecutor failed to give any reason at all for striking [K.S.].... [T]he court speculated that the prosecutor nonetheless struck her because he got a 'bad vibe' that she had voted to acquit when empaneled in a robbery case 19 years earlier. The prosecutor remained silent, failing even to confirm the court's assumption" and, thus, "failed to sustain his step two burden of providing" a neutral reason for the challenge. He says "the totality of the circumstances further suggested the prosecutor struck [K.S.] for discriminatory reasons. Not only did her background of employment with the NYPD suggest she was a juror with whom the prosecution 'would have been happy...,' but the purported 'bad vibe' that she might have acquitted in a prior criminal case was not applied to two other panelists with prior criminal jury service who were identified as white men. The prosecutor struck neither of them...." Although he did not respond to the prosecutor's explanation that he struck M.G. because she wanted scientific evidence, Estwick argues that the trial court's rejection of that rationale for a for-cause challenge shows it was pretextual.

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