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.

To be argued Tuesday, March 20, 2018

No. 35 People v Lawrence Parker
No. 36 People v Mark Nonni

Six police officers responded to a radio report of a burglary in progress at the Westchester Country Club in the Bronx in January 2008. They arrived at the private, gated facility five minutes later and saw two men walking down the driveway from the clubhouse toward a public road. When an officer called out "please, stop, we want to ask you a question," one of the men, Mark Nonni, ran away with three officers in pursuit. They tackled and handcuffed Nonni, after a struggle, and recovered a foot-long knife, a smaller butcher knife, and duct tape from his backpack, and found $1000 in cash in his pocket. An officer said the other man, Lawrence Parker, "briskly walked" across the street and, despite being told to stop, continued to walk away. After officers handcuffed Parker, they found a sledgehammer and crow bar in his backpack and a steak knife in his coat pocket. The club's caretaker, who had been robbed of $3000 at knife point and left bound with duct tape, identified Parker and Nonni as the perpetrators.

Supreme Court denied motions to suppress evidence obtained at the scene, finding the officers' conduct justified under People v De Bour (40 NY2d 210), and the defendants proceeded to a joint trial. On the second day of deliberations, the jury sent out three notes before the lunch recess. The court read the first note into the record, responded to it, and told the jury "we'll leave the other two for after lunch." As soon as it returned from lunch, the jury announced it had reached a verdict. The court took the verdict without addressing the two remaining notes. Parker and Nonni were each convicted of second-degree robbery and sentenced to 20 years to life.

The Appellate Division, First Department affirmed in a 3-2 decision, saying Parker and Nonni "were first seen on private property where a burglary had just been reported, in a suburban area, with nobody else visible anywhere in the vicinity. This gave rise to a founded suspicion of criminality, justifying a level-two common-law inquiry under the De Bour analysis. The police did not exceed the bounds of a common-law inquiry when they requested defendants to stop so that the police could 'ask them a question,' because such a direction does not constitute a seizure." Since Nonni "immediately ran, and ... Parker immediately made what officers described as a 'hurried' and 'evasive' departure..., the record supports the conclusion that both defendants 'actively fled from the police'.... Defendants' flight elevated the existing level of suspicion to reasonable suspicion, justifying pursuit and an investigative detention...."

The dissenters said, when the officers arrived at the club, they "had no description of the alleged suspects and no information concerning the 911 caller. Defendants were observed ... leaving the driveway of the club and walking down the street at an unhurried pace. The entry and exit of individuals from a commercial establishment during normal business hours cannot be deemed out of the ordinary.... Given the limited information conveyed by the radio run, the officers had, at best, sufficient cause to conduct a level-one request for information.... They said the police were unjustified in pursuing Nonni, who ran away, and Parker, "who did not even flee but merely walked at a 'hurried pace'.... The majority's conclusion that the police were justified in pursuing defendants is based on the faulty premise that the circumstances gave rise to a founded suspicion of criminality."

Parker and Nonni, in addition to arguing the police pursuit and detention were illegal, contend their convictions must be reversed because the trial court committed a mode of proceedings error by failing to give defense counsel meaningful notice of the contents of two substantive notes from the jury.

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For respondent: Bronx Assistant District Attorney Ryan P. Mansell (718) 838-6239

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To be argued Tuesday, March 20, 2018

No. 37 People v William Morrison

William Morrison was charged in 2006 with raping a 90-year-old dementia patient in the nursing home section of Rome Memorial Hospital, where he worked as a certified nurse's aid. At his trial in Oneida County Court, late on the second day of jury deliberations, the jurors sent out a note saying they had reached agreement on two lesser counts, but not on the top count of first-degree rape. The note said, "We have arrived on decision on [counts] 2 and 3, but we have a lot of work to do on #1. I don[']t see it being quick. Not sure what to do. We ar[e] starting to make way." The trial judge marked the note as court exhibit 9, but did not read it into the record. The court instructed the jury to continue working to try to reach a unanimous verdict, then at the juror's request sent them home for the night. The following day, the jury returned a verdict convicting Morrison of rape and sexual abuse in the first degree and endangering the welfare of a vulnerable elderly person in the second degree. He was sentenced to 25 years in prison.

The Appellate Division, Fourth Department initially affirmed the judgment, but subsequently granted Morrison's motion for a writ of error coram nobis based on his claim that he was deprived of effective assistance when his appellate counsel failed to challenge the trial court's handling of jury notes.

The Appellate Division ultimately reversed and ordered a new trial in a 4-1 decision, finding the trial court "violated a core requirement of CPL 310.30" and committed a mode of proceedings error "in failing to advise counsel on the record of the contents of a substantive jury note" marked court exhibit 9. "Our dissenting colleague concludes that the jury's statement, '[n]ot sure what to do,' was a ministerial inquiry concerning the logistics of the jury's deliberations, i.e., the jury was asking whether it should continue deliberating that evening considering the late hour. We agree that the note could be interpreted that way, but we conclude that it also could be interpreted as it was interpreted by the court, i.e., the jury was having difficulty reaching a unanimous verdict and was making a substantive inquiry for guidance concerning further deliberations. In response to the note, the court issued an Allen-type charge. Quite simply, even if we consider all the surrounding circumstances, the jury note was ambiguous, and we must resolve that ambiguity in defendant's favor...."

The dissenter argued the jury note "was ministerial in nature, and defendant was therefore required to preserve his challenge to County Court's handling of that jury note.... [C]onsidering the full text of court exhibit 9 and all of the surrounding circumstances, 'the only reasonable interpretation' ... of the jury's statement that it was '[n]ot sure what to do' is that the inquiry concerned the logistics of the jury's deliberations.... Consistent with the late hour and the court's practice of giving the jury a choice of whether to break for the evening or continue deliberating based on the status of the jury's deliberations, the record establishes that the jury raised a question of scheduling when it indicated that it was '[n]ot sure what to do'.... To the extent that the court provided a more robust response to the jury note than was required, I agree with the People that the court could not transform a ministerial inquiry regarding the logistics of a productive, continuing deliberation into a substantive deadlock announcement by merely exercising caution and reiterating the jury's deliberative obligations. Nor is the court's prudence indicative of an ambiguity."

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To be argued Tuesday, March 20, 2018

No. 38 Skanska USA Building Inc. v Atlantic Yards B2 Owner, LLC

In October 2012, Skanska USA Building Inc. entered into a construction management agreement with Atlantic Yards B2 Owner, LLC (B2 Owner), which provided for Skanska to build a high-rise residential tower as part of the Atlantic Yards development project covering 22 acres of public land in Brooklyn. Skanska was to receive a contract price of $116.9 million. The Empire State Development Corporation (ESDC), a public benefit corporation, had leased the project site through a related company to B2 Owner, an affiliate of Forest City Ratner Companies, LLC (Forest City). In December 2012, ESDC executed a development lease with Forest City affiliates which, among other things, required them to comply with Lien Law section 5. It also required Forest City Enterprises, Inc. to issue a formal "completion guarantee" that B2 Owner would complete the tower and would "use any and all amounts disbursed from time to time by the Construction Lender, solely to fully and punctually pay and discharge any and all costs, expenses and liabilities incurred for or in connection with the Guaranteed Work...."

The tower project was beset by delays and cost overruns, and in September 2014 Skanska terminated the construction management agreement. It then filed this action against B2 Owner and Forest City for breach of contract, including a claim that they violated Lien Law section 5 by failing to provide adequate security for payments owed to contractors and vendors. The statute provides that, for large private development projects on public land, "the public owner shall require the private entity for whom the public improvement is being made to post, or cause to be posted, a bond or other form of undertaking guaranteeing prompt payment of moneys due to the contractor," subcontractors, and suppliers. Supreme Court granted the defendants' motion to dismiss the Lien Law claim. It denied Skanska's motion to disqualify a law firm representing the defendants, Troutman Sanders LLP, for alleged conflicts of interest.

The Appellate Division, First Department affirmed the dismissal of the Lien Law claim on a 3-2 vote, saying the completion guarantee in the development lease satisfied the requirements of the statute. "This guarantee follows the letter of the statute, namely 'guaranteeing prompt payment' to contractors," it said. "That there are better guarantees available, such as a letter of credit, as the dissent notes, is beside the point. ESDC, as the public owner, was satisfied with the guarantee issued by Forest City Enterprises, Inc. Certainly, if the legislature had wanted the guarantee to be on par with a letter of credit it could have said that or identified the various types of guarantees that would satisfy the statute." The court agreed unanimously that the motion to disqualify Troutman was properly denied."

The dissenters said, "In order to achieve the objective of the Lien Law..., any alternative undertaking must provide substantially equivalent protection to that provided by a bond.... The Completion Guaranty that [Forest City] provided in this case ... is not the functional equivalent of a bond or other form of undertaking, because it is no more than [Forest City's] contractual promise to complete the project and pay its account, which, if not honored, requires a lawsuit to secure a judgment and a collection process to obtain satisfaction.... Moreover, recovery is dependent upon a guarantor's particular financial circumstances at the time a protected party is in need of the remedies that the Lien Law provides. This is hardly the streamlined and predictable process Lien Law § 5 calls for in 'guaranteeing prompt payment of moneys due to the contractor....' Nor is it an identifiable fund or asset on which a protected party can draw down payment."

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