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

September 7 thru September 14, 2022

State of New York
Court of Appeals

To be argued Wednesday, September 7, 2022

No. 70 Matter of City of Long Beach v New York State Public Employment Relations Board

Jay Gusler, a professional firefighter in the City of Long Beach and a member of the Long Beach Professional Firefighters Association (the Union), was injured in the line of duty in November 2014. When he remained out of work for nearly a year, the City sent him a letter in November 2015 informing him that it was "evaluating whether to exercise its right to separate [him] from employment" under Civil Service Law (CSL) § 71. The letter told Gusler that he would be given a hearing if he wanted to contest his termination, directed him to confirm in writing whether he would attend the hearing, and said his failure to respond would result in an automatic recommendation for termination.

CSL § 71 provides, "Where an employee has been separated from service by reason of a disability resulting from occupational injury or disease..., he or she shall be entitled to a leave of absence for at least one year, unless his or her disability is of such a nature as to permanently incapacitate him or her for the performance of the duties of his or her position."

The Union sent the City a demand to negotiate the procedures for terminating its members under CSL § 71 and, when the City refused, the Union filed an improper practice charge contending that its refusal to negotiate violated CSL § 209-a(1)(d) of the Taylor Law.

An administrative law judge (ALJ) agreed with the Union that the City's refusal violated the Taylor Law. The ALJ said the City established termination procedures – requiring "notice to the affected employee, an opportunity to be heard and, if the employee does not pursue the opportunity to be heard, automatic termination" – that "impact" the terms and conditions of employment and are therefore a mandatory subject of negotiation.

The Public Employment Relations Board (PERB) affirmed the decision, citing its own precedents to conclude "the City has an obligation to bargain prior to imposing procedures for terminating an employee pursuant to CSL § 71." It said "there is nothing inescapably implicit in CSL § 71 which establishes the Legislature's plain and clear intent to exempt employers from the State's strong and sweeping policy to support employer-employee negotiations."

Supreme Court denied the City's petition to annul PERB's decision, deferring to PERB's interpretation of CSL § 71. "As the agency charged with implementing the fundamental policies of the Taylor Law, the board is presumed to have developed an expertise and judgment that requires us to accept its construction if not unreasonable...," the court said.

The Appellate Division, Second Department reversed, saying no deference was owed to PERB because the "'question is one of pure statutory construction.'" It said, "The Department of Civil Service has promulgated implementing regulations for [CSL] § 71, including detailed procedures for notifying an employee of the right to a one-year leave of absence during continued disability, and notifying an employee of an impending termination following the expiration of that one-year period and the right to a hearing and to apply for a return to duty.... Here, the specific directives of [CSL] § 71 and 4 NYCRR 5.9 leave no room for negotiation of the procedures to be followed prior to the termination.... Therefore the presumption in favor of collective bargaining is overcome."

PERB and the Union argue, "This Court's precedent firmly establishes that procedures associated with the discretionary exercise of statutory rights are mandatorily negotiable absent plain and clear or inescapably implicit legislative intent to the contrary." They say the City did not preserve its claim that state regulations left no room for bargaining by raising it in any of the prior proceedings and, in any case, "A regulation cannot supersede Taylor Law bargaining obligations."

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For appellant Union: Louis D. Stober, Jr., Mineola (516) 742-6546
For respondent Long Beach: Terry O'Neil, Garden City (516) 267-6300

State of New York
Court of Appeals

To be argued Wednesday, September 7, 2022

No. 81 34-06 73, LLC v Seneca Insurance Company

Seneca Insurance Company issued a commercial policy, effective from April 2009 to April 2010, covering nine vacant buildings and lots owned by limited liability companies controlled by Mohannad Malik (the Malik plaintiffs). The policy included a Protective Safeguards Endorsement (PSE) that required the insureds to maintain automatic sprinkler systems in the buildings, among other things, and provided that Seneca would not pay for any fire loss or damage if they failed to do so. The covered properties included a vacant warehouse in Long Island City, which caught fire in September 2009. Seneca disclaimed coverage based on the fire department's report that the building did not have a working sprinkler system. The Malik plaintiffs then brought this breach of contract action against Seneca.

When discovery revealed that Seneca had inspected the warehouse in April 2009 and informed Malik that the sprinkler system was out of service and should be repaired, but it did not cancel the policy and apparently did not follow up to determine whether the system was repaired, the plaintiffs contended that Seneca had waived its right to disclaim coverage based on failure to comply with the PSE. Supreme Court found there were issues of fact regarding the waiver claim. At trial, after Malik testified that he never intended to insure the warehouse as a sprinklered building and Seneca's vice president for underwriting conceded that the PSE might have been included in the policy by mistake, the plaintiffs moved to amend their complaint to conform to the proof and add a claim for reformation of the policy to exclude the PSE based on mutual mistake. The court rejected Seneca's argument that the reformation claim was barred by the six-year statute of limitations, concluding that the reformation claim related back to the timely breach of contract claim under CPLR 203(f). The jury found that the parties' "true agreement" was for a policy without a PSE and that the sprinkler requirement had been included by mistake. The court entered a $4.5 million judgment against Seneca.

The Appellate Division, First Department affirmed, saying the reformation claim was not time-barred because it "relates back to the complaint here where the applicability of the Protective Safeguards Endorsement ... has been at the heart of the litigation from the outset and the same evidence that [Seneca] waived enforcement of the endorsement because it inspected the subject premises and knew they were non-sprinklered but did not cancel the policy supports plaintiffs' claim that the endorsement was unenforceable, regardless of whether the claim is based on waiver or reformation....

Seneca argues that the relation back doctrine and CPLR 203(f) cannot save the time-barred reformation claim because the plaintiffs' initial timely complaint did not give it notice of what facts would need to be proved to litigate the new claim of mutual mistake. The original complaint did not contain "any allegations related to what took place prior to the issuance of the policy, i.e., there are no allegations of any mistakes made during the negotiation or issuance of the policy." It says the lower courts failed to apply "binding Court of Appeals precedent" that CPLR 203(f) "cannot be used to save a reformation claim when the only claim previously asserted is a breach of contract claim."

For appellant Seneca: Christopher R. Carroll, Manhattan (212) 252-0004
For respondent Malik plaintiffs: Dennis T. D'Antonio, Rye Brook (212) 227-4210

State of New York
Court of Appeals

To be argued Wednesday, September 7, 2022

No. 72 People v Hasahn D. Murray

Hasahn Murray and two co-defendants were charged with beating and robbing a man in East Harlem in July 2016. At the conclusion of their joint jury trial, Supreme Court excused both alternate jurors and sent them home, then broke for lunch before delivering the final jury charge. When the proceedings resumed about an hour later, a defense counsel informed the judge that a sworn juror had discussed the case at a social gathering the prior weekend and said that "all of the defendants had been busted on video" and the jury need only determine "the degree of the charge." Attorneys for all three defendants moved for a mistrial, arguing that the juror had prematurely decided the defendants' guilt and there were no available alternates. Instead, the court contacted the alternate jurors, who said over speaker phone that they remained available for jury service, had not discussed the case with anyone, and had not decided the question of guilt. The judge told them to return to court the next morning, when she dismissed the sworn juror for misconduct, replaced her with the first alternate juror, and then delivered the jury charge. Murray was convicted of robbery and assault in the second degree and sentenced to 12 years in prison.

On appeal, Murray argued that the trial court did not comply with CPL 270.35(1), which governs the substitution of an alternate when a judge must discharge a sworn juror mid-trial. The statute provides, "If an alternate juror or jurors are available for service, the court must order that the discharged juror be replaced by the alternate juror ... provided, however, that if the trial jury has begun its deliberations, the defendant must consent to such replacement.... If no alternate juror is available, the court must declare a mistrial...."

The Appellate Division, First Department affirmed on a 4-1 vote, ruling the trial court properly substituted the alternate where the interval between his discharge and reinstatement as a juror "was de minimis." The majority said, "[A]ccording to the plain language of CPL 270.35(1), the trial court was required to decide if the alternate was 'available for service,' and did not require the consent of defendant given that the jury had not begun its deliberations.... [T]his court has instructed trial judges to bear in mind the ultimate objective of ensuring the impartiality of the fact finder, while balancing whether the 'removal of the [alternate] juror would ... necessitate[] the drastic remedy of a mistrial'.... That is precisely what occurred here. The trial court twice questioned the alternates and ascertained that they could fairly deliberate before substitution. We review such a determination for abuse of discretion and find none here."

The dissenter said the trial court "had neither the statutory authority nor the inherent power to recall alternate jurors who had been discharged and returned to their private life," and should instead have granted a mistrial. "[T]he alternates were specifically given permission to return to private lives, which included if they wanted, speaking with anyone, including lawyers, about the case.... Once the alternates were 'excused,' they were no longer 'available alternates.'" She said, "The majorities' position, carried to its logical conclusion, would make the discharge of a juror meaningless, because the trial court would have the authority and discretion to reinstate an alternate juror at any time after discharge, even a juror who had returned to their personal life, as long as they are available to serve."

For appellant Murray: Abigail Everett, Manhattan (212) 577-2523 ext 508
For respondent: Manhattan Assistant District Attorney Alexander Michaels (212) 335-9000

State of New York
Court of Appeals

To be argued Thursday, September 8, 2022 at the Fulton County Courthouse in Johnstown

No. 73 Matter of Independent Insurance Agents and Brokers of New York, Inc. v New York State Department of Financial Services

In 2018, the State Department of Financial Services (DFS) amended Insurance Regulation No. 187 to establish a uniform standard of care requiring insurance companies, as well insurance agents and brokers (identified as "producers" in the new regulation), to consider "the best interest of the consumer" in recommending life insurance and annuity policies. The amendment, titled "Suitability and Best Interests in Life Insurance and Annuity Transactions," was meant to address concerns about the complexity of insurance and annuity products, the growing need of consumers to rely on professional advice to understand such products, and to mitigate abuses in the compensation of agents and brokers, who had incentive to recommend financial products that would result in higher commissions but might fail to meet consumers' needs. Independent Insurance Agents and Brokers of New York, Inc. (IIAB), a trade association, and one of its members brought this suit to strike down the regulation on multiple grounds, including that it was unconstitutionally vague.

Supreme Court dismissed the suit, saying, "The Amendment is not ambiguous; in fact, it is clear and quite self-explanatory. It provides that the producer must consider the best interest of the consumer.... It contains precise definitions of the issues highlighted by the petitioners. To be clear, the court is not persuaded by the arguments that different meanings could be ascribed; for example: 'consumer.' Consumer is defined as 'the owner or prospective purchaser of a policy'.... Recommendation is defined ... as 'advice' provided to a consumer intended, or reasonably perceived by the consumer to be intended, "to result in a consumer entering into or refraining from entering into a transaction.'"

The Appellate Division, Third Department reversed and declared the regulation unconstitutionally vague. "[W]hile the consumer protection goals underlying promulgation of the amendment are laudable, as written, the amendment fails to provide sufficient concrete, practical guidance for producers to know whether their conduct, on a day-to-day basis, comports with the amendment's corresponding requirements for making recommendations and compiling and evaluating the relevant suitability information of the consumer.... Although the amendment provides certain examples of what a recommendation does not include..., the remaining definitional language is so broad that it is difficult to discern what statements producers could potentially make that would not be reasonably interpreted by the consumer to constitute advice regarding a potential sales transaction.... Additionally..., the guidelines with respect to the suitability information that producers must obtain from the consumer and the suitability considerations that must necessarily be disclosed are inadequate to the extent that they rely upon subjective terms that lack long-recognized and accepted meanings...." Given the "ambiguities in the language" of the amendment and "its lack of clear standards" for enforcement, the court said, DFS would "have 'virtually unfettered discretion' in determining whether a violation has occurred."

For appellant DFS: Assistant Solicitor General Sarah L. Rosenbluth (518) 776-2025
For respondents IIAB et al: Howard S. Kronberg, White Plains (914) 948-7000

State of New York
Court of Appeals

To be argued Thursday, September 8, 2022 at the Fulton County Courthouse in Johnstown

No. 74 People v Ronald K. Johnson

Emergency medical personnel were called to assistant a heavily intoxicated 14-year-old girl who was found nearly unconscious and sitting in a pool of vomit at a Rochester bus stop in October 2006. At a hospital, she said she had virtually no memory of events after she began drinking with an acquaintance. A sexual assault examination recovered semen from her underwear and swabs of her body, but due to backlogs at the Monroe County Crime Lab, the DNA evidence was not analyzed until January 2010. The following month, the DNA profile was entered into the CODIS database and matched to Ronald K. Johnson, who had not been a suspect in the case. Due in part to difficulties investigators encountered in locating the victim through her mother and through school and motor vehicle records, Johnson was not indicted until June 2014. He was charged with first-degree rape, for allegedly having sexual intercourse with a person who was "incapable of consent by reason of being physically helpless," and with second-degree rape, for intercourse with a person under the age of 15.

Johnson moved to dismiss the charges, saying the nearly eight-year delay between the crime and the indictment violated his due process right to prompt prosecution. County Court denied the motion based on the five-factor test in People v Taranovich (37 NY2d 442) for assessing preindictment delay: (1) extent of the delay; (2) reason for the delay; (3) nature of the underlying charge; (4) whether there was an extended period of pretrial incarceration; (5) whether there is any indication the defense was impaired by the delay. After his motion was denied, Johnson pled guilty to second-degree rape and was sentenced to 2½ to 5 years in prison.

The Appellate Division, Fourth Department affirmed. After assuming, without deciding, that the prosecution failed to establish good cause for the delay, it found the first three Taranovich factors favored Johnson. However, the court ruled his rights were not violated "because his defense to the charge of which he was convicted was not prejudiced in any conceivable respect by the preindictment delay.... Specifically, although defendant correctly notes that the extensive preindictment delay undoubtedly compromised his ability to contemporaneously investigate the facts and circumstances of the underlying incident, he concedes that no amount of contemporaneous investigation could have revealed a defense to the strict-liability crime of which he was ultimately convicted, namely, rape in the second degree" based on the victim's age. It said, "Whether and to what extent the preindictment delay impaired defendant's ability to defend himself on the separate count of rape in the first degree is irrelevant to our analysis because defendant was not convicted of that count."

Johnson argues the Appellate Division erred by limiting its prejudice analysis to the second-degree rape count because he was also facing the more serious first-degree rape charge when he made his motion to dismiss, the "Appellate Division acknowledged that he was prejudiced, by the delay at least as to the highest offense charged," and he accepted the plea bargain only after the trial court denied his motion. He says that had County Court dismissed the first-degree charge, he "would not have had remotely the same incentive – avoiding the risk of conviction after trial of a more serious offense – to accept the People's offer to plead guilty to rape in the second degree. Thus, the impairment of [his] defense on one count was inextricably intertwined with the other...."

For appellant Johnson: Timothy S. Davis, Rochester (585) 753-4431
For respondent: Monroe County Assistant District Attorney Kaylan C. Porter (585) 753-4674

State of New York
Court of Appeals

To be argued Tuesday, September 13, 2022

No. 75 Sage Systems, Inc. v Liss

This case stems from a partnership dispute between Sage Systems, Inc. and Robert Liss, who formed S-L Properties in 1984 to buy and hold shares of stock in a Manhattan cooperative for a unit the partners intended to share. In 2006, Liss brought an action against Sage Systems seeking a judicial dissolution of their partnership, claiming that Sage violated their proprietary lease with the cooperative by subletting space to other tenants. Supreme Court dismissed the complaint on summary judgment, finding there had been no violation of the proprietary lease. It further found that Liss had "unclean hands with respect to his demand for the equitable relief of dissolution" because he had also sublet space to others.

In 2010, Sage Systems brought this action against Liss for indemnification, under section 13.02(b) of their partnership agreement, to recover attorneys' fees it had incurred in defending against the dissolution action. Section 13.02(b) provides, "The Partnership and the other Partners shall be indemnified and held harmless by each Partner from and against any and all claims, demands, liabilities, costs, damages, expenses and causes of action of any nature whatsoever arising out of or incidental to any act performed by a Partner which is not performed in good faith or is not reasonably believed by such Partner to be in the best interests of the Partnership and within the scope of authority conferred upon such Partner under this Agreement, or which arises out of the fraud, bad faith, willful misconduct or negligence of such Partner." Liss died in 2011 and his son was appointed executor of his estate.

Supreme Court granted summary judgment to Sage and awarded it $80,153.04, rejecting the Liss estate's argument that the indemnity provision did not address attorneys' fees. The court said, "As the provision here permits the recovery of any costs, damages, and expenses..., it includes the recovery of attorney fees." It further found the provision permits recovery of attorneys' fees incurred in litigation between the partners, not just those involving third-party claims. "The parties ... did not limit the indemnity in any way, nor is there an indication that it is limited to specific claims or third-party claims in general."

The Appellate Division, First Department affirmed, saying the "broad language" of the provision "encompasses the recovery of attorneys' fees" and "is not limited to third-party claims." It concluded, "The finding of the court in the dissolution action that [Liss] had unclean hands in bringing that action is the equivalent of a determination that [he] acted in bad faith."

The Liss estate argues the indemnity provision "contains no reference whatsoever to attorney's fees. It is well-settled that where a contract for indemnification does not specifically reference indemnification for attorney's fees, the parties are not entitled to recover such fees." It cites Hooper Assocs. v AGS Computers (74 NY2d 487), which states, "Inasmuch as a promise by one party to a contract to indemnify the other for attorney's fees incurred in litigation between them is contrary to the well-understood rule that parties are responsible for their own attorney's fees, the court should not infer a party's intention to waive the benefit of the rule unless the intention to do so is unmistakably clear from the language of the promise." The estate says the provision does not apply to litigation between partners and there was no showing of bad faith.

For appellant Liss estate: Christopher A. Raimondi, Massapequa (516) 308-4462
For respondent Sage Systems: Fred L. Seeman, Manhattan (212) 608-5000

State of New York
Court of Appeals

To be argued Tuesday, September 13, 2022

No. 76 Matter of Laland v Bookhart

A seven-month-old girl, A.B., was removed from her mother's care due to neglect in 2012 and placed in the custody of the Suffolk County Department of Social Services (DSS), which placed her in foster care. The mother admitted neglecting A.B. The child's biological father, Davlin Laland, resides in North Carolina. Pursuant to the Interstate Compact on the Placement of Children (ICPC), which is designed to promote cooperation among states in finding suitable placements for certain children who are moved from one state to another, Family Court in 2013 directed that an application be made to North Carolina to allow A.B. to reside with her father. After conducting an investigation required by the ICPC, North Carolina authorities found that placement with Laland was not suitable for the child and denied the request.

In 2017, Laland commenced this proceeding against the mother and DSS to obtain custody of A.B. DSS opposed placement of the child with Leland based on the 2013 ICPC denial by North Carolina. Leland argued the ICPC does not apply to the reunification of a child with a noncustodial parent.

Family Court held that the ICPC applies in this case and dismissed Leland's custody petition without a hearing. The court said Leland's "ICPC was disapproved after an investigation from North Carolina finding the father to be an inappropriate resource. Because the child is in the care and custody of DSS, ICPC applies...."

The Appellate Division, Second Department affirmed, saying, "Where a child is in the custody of a child protective agency (see Family Ct Act § 1012[i]), and a parent living outside of New York petitions for custody of the child, the provisions of the ICPC apply.... Here, since the child was in the custody of DSS and the father resided in North Carolina, we agree with the Family Court's determination that the ICPC applied. Further, since the court could not grant the father's petitions for custody absent approval from the relevant North Carolina authority, and that approval was denied, we agree with the court's determination dismissing the petitions...."

Leland argues that the ICPC's "plain language," history, and purpose show that it does not apply to biological parents, but only to foster care placements and adoptions. He cites article III of the ICPC, which bars a "sending agency" from sending a child to another state "for placement in foster care or as a preliminary to a possible adoption" unless it complies with the ICPC and obtains approval from the receiving state. The article also states the ICPC does not apply to the relocation of a child by its "parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or guardian." He also argues that applying the ICPC to parents "would violate parents' and children's rights to due process."

For appellant Laland: Christine Gottlieb, Manhattan (212) 998-6693
For respondent DSS: James G. Bernet, Central Islip (631) 853-4839
Attorney for the Child: Domenik Veraldi, Jr., Islandia (631) 234-5558

State of New York
Court of Appeals

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To be argued Tuesday, September 13, 2022

No. 77 People v Donnell Baines

Donnell Baines was arrested on suspicion of kidnapping in a Manhattan criminal courthouse on July 15, 2010, when V.H., a woman he brought with him to a court appearance, told a court officer that Baines was holding her against her will. On the same day, investigators obtained a warrant to search Baines' Manhattan apartment and seize a variety of items including "any and all computers and computer related equipment," "electronic communication equipment ... and stored information, data, and images contained on or in" the equipment, and property belonging to V.H and at least two other women; but the warrant did not identify the crimes being investigated or any criminal activity to which the computers and other items might relate. The warrant was based on a supporting affidavit by a member of the district attorney's Detective Squad, who interviewed V.H. According to the affidavit, she told the detective that she had answered Baines' internet ad for nude models and he bought a bus ticket to bring her from North Carolina to New York. She said she saw computers and cameras in his apartment with photos of women wearing lingerie and property belonging to other women. V.H. said she stayed with Baines voluntarily for five days, but when she tried to leave on July 14 he slapped her and threatened to harm her if she left or called the police. The affidavit said her information provided "reasonable cause to believe that ... evidence of the commission of the crime[s] Kidnapping in the Second degree and related crimes" would be found. Baines moved to suppress the evidence seized, contending the warrant was invalid because it "failed to describe with sufficient particularity the property to be seized" and did not identify any crime to which the search related.

Supreme Court denied the motion to suppress, explicitly relying on the supporting affidavit to find the warrant "was sufficiently specific regarding the areas to be searched and the items to be seized.... There was an ample basis to conclude – based on [V.H.]'s claims that defendant advertised for services over the internet, that she sent him photos of herself to defendant's phone, that she saw images of scantily dressed women on defendant's computer, coupled with the claim she was being help against her will and the fact that defendant was in the possession of another woman's belongings at the time of his arrest – that evidence of kidnapping-related activity might be found on defendant's computers." Baines was convicted at trial of first-degree rape, sex trafficking, and sexual abuse; promoting prostitution, assault, unlawful imprisonment, and related crimes. He was ultimately sentenced to 28½ to 32 years in prison.

The Appellate Division, First Department largely affirmed without directly addressing the validity of the warrant.

Baines argues the warrant was invalid on its face and, under Groh v Ramirez (540 US 551), the trial court erred in relying on the supporting affidavit, which was neither attached to the warrant nor incorporated by reference. The U.S. Supreme Court held in Groh, "The fact that the application adequately described the 'things to be seized' does not save the warrant from its facial invalidity. The Fourth Amendment by its terms requires particularity in the warrant, not in the supporting documents." Baines says the warrant gave police "free reign to search any and all means of communication, written and electronic, and any means of storing information, digital or written..., without mention in the warrant of any alleged criminal activity to curb the police's discretion or delineate the scope of their search."

For appellant Baines: Joseph M. Nursey, Manhattan (212) 402-4100
For respondent: Manhattan Assistant District Attorney Steve Kress (212) 335-9000

State of New York
Court of Appeals

To be argued Wednesday, September 14, 2022

No. 78 Matter of Green v Dutchess County BOCES

Eric Watson was employed by Dutchess County BOCES in 2007, when his right leg was injured in a work-related accident. In 2012, a Workers' Compensation Law Judge (WCLJ) classified him as having a permanent partial disability and found he was entitled to wage-loss benefits for a maximum of 350 weeks under Workers' Compensation Law (WCL) § 15(3)(w). Watson received "non-schedule" disability benefits of $500 per week until March 2018, when he died for reasons unrelated to his work injury after accruing 311.2 weeks of benefits. Soon after his death, an attorney for Watson's estate sought payment of the remaining 38.8 weeks of non-schedule benefits to Watson's 13-year-old son (hereafter, Claimant) pursuant to WCL § 15(4). The statute provides, "An award made to a claimant under subdivision three [of WCL § 15] shall in case of death arising from causes other than the injury be payable to" certain enumerated beneficiaries, including a surviving spouse or children under the age of 18 years.

A WCLJ ruled Claimant was not entitled to a posthumous award for his father's unaccrued benefits because Watson's claim "abated" upon his death.

The Workers' Compensation Board affirmed, ruling that WCL § 15(4) applies only to schedule loss of use (SLU) awards, not to non-schedule disability awards, which are "for the future loss of wages. This is not a set amount.... To be entitled to the awards the claimant must have causally related lost time. With a claimant's death, there are no future earnings to lose and no posthumous award is warranted."

The Appellate Division, Third Department reversed, saying, "[G]iven the plain and unqualified language of [WCL] § 15(4), and in consideration of the recent amendments to the [WCL] reflecting the Legislature's intent to eliminate disparity between the two different classes of permanent partial disability awards, we hold that Claimant is entitled to an additional posthumous award for the remaining cap weeks owed for decedent's nonschedule permanent partial disability award...." It said "we see no basis to distinguish SLU and nonschedule awards where the plain language of subsection (4) applies to any and all awards made under [WCL] § 15(3). Accordingly, the language employed in [WCL] § 15(4) reflects that the Legislature intended this subdivision to apply to all permanent partial disability awards made pursuant to subdivision (3) – that is, both SLU and nonschedule permanent partial disability awards...." It remitted the matter to the Board, which said it was "constrained to find" Claimant was entitled to the remaining 38.8 weeks of benefits at $500 per week, payable in a lump sum of $19,400.

The Board and BOCES argue the text of WCL § 15(3)(w) provides that benefits in a non-schedule award are only "payable during the continuance of such permanent partial disability" and only to the extent it impairs the claimant's "wage-earning capacity" and, since neither condition continues after death, the award abates and no posthumous payments to beneficiaries is required. They say the recent amendment to WCL § 15(3)(w) imposed a cap on the number of weeks a claimant may receive benefits, but did not guarantee that benefits would be paid for the entire period.

For appellant BOCES: Ralph E. Magnetti, Tarrytown (914) 332-1800
For appellant Workers' Comp. Board: Asst. Solicitor General Dustin J. Brockner (518) 776-2017
For respondent Claimant: Louis M. Dauerer, Poughkeepsie (845) 454-9700

State of New York
Court of Appeals

To be argued Wednesday, September 14, 2022

No. 79 People v Rakeem Douglas

Police officers stopped Rakeem Douglas in October 2015 as he drove a rental car in Manhattan after they saw him commit a series of traffic violations. They arrested him for possession of a gravity knife, which was clipped to his pocket, and impounded the car when they learned it was rented in his girlfriend's name and he was not an authorized driver. During an inventory search of the vehicle they found a handgun hidden between the trunk and the rear seat. Douglas moved to suppress the gun on the ground the search was improperly conducted.

At the suppression hearing, the officers testified that they adhered to the procedures set out in the NYPD Patrol Guide. They said they placed all items removed from the car into a large plastic bag, but they did not create a contemporaneous list of those items. They did not complete their written inventory of recovered items until the next day, about 11 hours after the search, and there was no testimony about the location or custody of the plastic bag during that period. The officers said the 11-hour delay was due in part to the discovery of the handgun, which required them to call in the Evidence Collection Team to process it for DNA and fingerprints, and to the need to complete required paperwork for the arrest. The inventory lists did not specify whether seized items were recovered from the car or from Douglas' person.

Supreme Court denied the motion to suppress, saying, "Based upon the written NYPD policy..., this court concludes that the officers were in fact guided by a set of policy and procedural guidelines which limited their discretion, safeguarded the defendant's constitutional rights, and fulfilled the purposes of a lawful inventory search." It also found the search was properly conducted in compliance with the Patrol Guide procedures. Douglas then pled guilty to second-degree criminal possession of a weapon and was sentenced to six years in prison.

The Appellate Division, First Department affirmed, saying "the officers followed a valid procedure for an inventory search of defendant's car.... The forms used by the police were sufficient to create a meaningful inventory list and there is no indication that the inventory search was a ruse for searching for incriminating evidence.... The delay in completing the inventory procedure was satisfactorily explained by the particular circumstances of the police investigation."

Douglas argues the NYPD's inventory search procedures fail to meet constitutional standards and his conviction must be reversed "because police recovered the gun under the authority of a protocol that failed to limit the officers' discretion and that undermined the purposes of an inventory search." Due to "the NYPD's inadequate inventory search protocol," he says "the police threw [his] property in a bag, left it unsecured in a busy police precinct for 11 hours, and then created an inventory – without the benefit of any list of the property made at the time of the search – on vouchers that provided no information about where or how the property was recovered." Without a contemporaneous list, he says, officers "have nothing to reference when later vouchering property that may have been stolen, lost, or contaminated during any delay...." He says a valid search protocol should also set a time frame for completing an inventory and require officers to secure seized property during any delay.

For appellant Douglas: Stephen R. Strother, Manhattan (212) 402-4100
For respondent: Manhattan Assistant District Attorney Stephen J. Kress (212) 335-9000

State of New York
Court of Appeals

To be argued Wednesday, September 14, 2022

No. 80 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."

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