

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 on Wednesday, March 28, 2018

No. 48 People v Matthew Kuzdzal

(papers sealed)

Matthew Kuzdzal was accused of sexually assaulting and fatally injuring his girlfriend's five-year-old son, who had been left in his care at their Buffalo home in September 2013. Before the jury began deliberating, one of Kuzdzal's friends, who was attending the trial, reported that she had overheard two of the jurors during a break describe Kuzdzal as a "scumbag." Supreme Court called the spectator to the witness stand, where she testified that she saw the jurors "outside smoking a cigarette talking about Matthew's a scumbag." She also said she had seen them "in the back row [of the jury box] laughing and making faces." Defense counsel asked the court to conduct a Buford inquiry of both jurors to determine whether they were capable of rendering an impartial verdict. The prosecutor opposed an inquiry and asked the court to first determine whether the spectator's account was credible. The court denied defense counsel's request, saying, "I don't believe that an inquiry of the juror is necessary or appropriate here ... [b]ased on what I heard." Kuzdzal was convicted of depraved indifference murder and predatory sexual assault against a child and sentenced to consecutive terms of 25 years to life in prison.

The Appellate Division, Fourth Department reversed and granted a new trial on a 3-2 vote. It said the trial court "erred in failing to make a proper inquiry of two jurors who allegedly were overheard making disparaging comments about defendant during a recess.... Not only does the court's failure to hold an inquiry under such circumstances constitute reversible error, but its failure to place the reasons for its ruling on the record also constitutes reversible error.... The court's ruling that an inquiry was not 'necessary or appropriate' was conclusory and ... did not constitute an implied determination that the observer's testimony was incredible.... Based on the record before us, we are compelled to conclude that the jurors' alleged reference to defendant as a 'scumbag' indicated the possibility of juror bias, and thus that the court should have granted defendant's request to make an inquiry of the jurors."

The dissenters said, "[A] court may not simply intrude on the jury and begin questioning a member or members thereof unless there is some credible information indicating that a juror may have made a comment or taken an action that raises a question regarding that juror's ability to be impartial. Here, we agree with the [trial] court that no such credible information was presented and that no personal inquiry of the jurors at issue was necessary or proper.... [T]he court, by stating that it was basing its ruling on what it had heard, determined that the spectator's testimony was not sufficiently credible to warrant disrupting the normal trial procedure or further inquiring into the actions of the two jurors in question. The record fully supports that determination. The spectator's testimony was riddled with inconsistencies, and it did not comport with the chronology of the proceedings in court as they are reflected in the record."

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For respondent Kuzdzal: Lyle T. Hajdu, Lakewood (716) 488-1178

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No. 49 People v Akeem Wallace

Akeem Wallace carried a .22 caliber handgun in his pocket in June 2013 when he arrived for work at a McDonald's restaurant in Buffalo, where he was employed as a manager. As he stood up from a table in the dining area, the gun went off and wounded him in the leg. Wallace handed the gun, which was unlicensed, to a cousin, who left through the back door. Wallace was charged with a felony count of criminal possession of a weapon in the second degree. Prior to his trial, he moved to reduce the charge pursuant to Penal Law § 265.01(1), which provides that possession of an illegal firearm in one's "home or place of business" is only a misdemeanor. Supreme Court denied the motion. Wallace was convicted of the felony charge after a bench trial and was sentenced to three and a half years in prison.

The Appellate Division, Fourth Department affirmed in a 4-1 decision. "Although the 'place of business' exception is not statutorily defined, it has been 'construed narrowly by the courts in an effort to balance "the State's strong policy to severely restrict possession of any firearm" ... with its policy to treat with leniency persons attempting to protect certain areas in which they have a possessory interest and to which members of the public have limited access'..." the majority said. "Inasmuch as the evidence at trial established that defendant was prohibited from bringing a gun to work, we conclude that to permit defendant to be subjected only to a misdemeanor 'would certainly controvert the meaning and intent of the statute'..."

The dissenter said the conviction should be reduced to fourth-degree weapon possession, a class A misdemeanor, because Wallace "possessed the weapon at his 'place of business' inasmuch as he undisputedly worked at the restaurant." In the cases the majority relied on, he said, the courts "determined, in essence, that the legislature could not possibly have meant that 'place of business' literally means 'place of business,' and they therefore adopted a limited definition of that phrase, which is not defined in the statute. In my view, the statute is clear and unambiguous on its face, and there is thus no need to discern the legislature's intent.... Finally, although McDonald's employees may have been prohibited by their employer from bringing firearms to work, that would merely be grounds for terminating defendant's employment or otherwise disciplining him; it would not make his conduct illegal. The legality of an employee's conduct cannot and should not be determined by reference to an employee handbook."

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To be argued on Wednesday, March 28, 2018

No. 50 People v Twanek Cummings

In March 2012, a gunman stepped out of a minivan and shot three men who were standing together at the corner of 129th Street and St. Nicholas Terrace in Manhattan. The victims survived, but none of them could identify the shooter, who fled in the van. Soon after the shooting, one of the victims called 911 to ask for help. In a recording of that call, an unidentified man can be heard in the background exclaiming, "Yo, it was Twanek, man! It was Twanek, man!" Twanek Cummings was arrested 10 weeks later and indicted for attempted murder, assault, and related charges.

At Cummings' first trial, Supreme Court denied the prosecution's motion to admit into evidence the 911 tape, including the statement of the unidentified man, under the excited utterance exception to the hearsay rule. The trial ended with a deadlocked jury. His retrial began before a different judge, who also denied the prosecution's motion to admit the statement of the unidentified man, saying it did not qualify as an excited utterance because there was no way to know whether he witnessed the incident himself "or whether someone else reported the facts to him and he was just parroting what he was told." The judge fell ill during jury selection and was replaced by a third judge, who admitted the statement under the excited utterance exception. Cummings was acquitted of attempted murder, but convicted of first-degree assault and lesser charges. He was sentenced to 18 years in prison.

The Appellate Division, First Department affirmed. "The court providently admitted, as an excited utterance, the statement of an unidentified bystander, audible on the 911 call made by one of the victims, that implicated defendant. All of the circumstances -- most significantly that the statement was made immediately after the shooting -- established a strong likelihood that the declarant observed the shooting..." it said. "Although a contrary ruling on the excited utterance issue had been made by a previous judge, who presided over part of jury selection but was unable to continue because of illness, this circumstance did not foreclose the successor judge's ruling by operation of the law of the case doctrine. The ruling was evidentiary and did not fall within the ambit of that doctrine...."

Cummings argues the statement is not admissible as an excited utterance because there is no evidence that the declarant spoke from personal knowledge. Admissibility "requires evidence from which the trial court reasonably may infer that the declarant 'had an opportunity to observe personally the event described in the declaration,'" he says, and "[n]o evidence showed that the person who uttered 'it was Twanek, man,' however excited he may have been, in fact saw the shooting.... The words themselves -- employing the past tense -- ascribed no conduct to 'Twanek,' ongoing or otherwise, which might have bespoken the declarant's personal observation...." Because one to three minutes elapsed between the shooting and the 911 call, he says, "the declarant may have simply uttered a rumor he had heard in the neighborhood, or, harboring a personal grudge against Twanek, seized the moment to falsely accuse him." Cummings also argues the judge who admitted the statement violated the law of the case doctrine. While prior evidentiary rulings may not bind a court conducting a retrial, the substituted judge lacked authority to overrule the judge he replaced in the same proceeding, he says. "He overruled her in the course of the same trial, after he was substituted for her; her ruling had been on the merits; and the parties had enjoyed a full and fair opportunity to litigate the issue...."

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