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.

To be argued Thursday, February 12, 2015 (arguments begin at noon)

No. 51 Matter of Lopez v Evans *(some papers sealed)*

Edwin Lopez was convicted of murder for fatally shooting a man during an attempted robbery in 1973 and was sentenced to 15 years to life in prison. He was released on lifetime parole in 1994. In August 2008, while he was a patient at the South Beach Psychiatric Center, he was charged with misdemeanor assault after an altercation with a fellow patient. After a court-ordered psychiatric examination, two psychologists found that he suffered from dementia and was unfit to stand trial. Based on those findings, Criminal Court dismissed the case and committed Lopez to the custody of the Office of Mental Health. At the same time, the State Division of Parole initiated a parole revocation proceeding against him based on the alleged assault at South Beach. The Parole Board found Lopez had violated his parole and imposed an assessment of at least 24 months of additional imprisonment.

On his administrative appeal, Lopez argued that because he was found mentally unfit for a criminal trial, he was likewise unfit to assist in his defense in the parole revocation proceeding. The Appeals Unit affirmed the decision, saying "mental illness is not an excuse for a parole violation." Lopez brought this article 78 proceeding against Andrea Evans, as chairwoman of the Division of Parole, arguing the Parole Board violated due process by proceeding against him after he was found mentally unfit for trial on the same criminal charge.

Supreme Court, Bronx County granted the Division of Parole's motion to dismiss the suit based on precedent from the Appellate Division, Third Department, which held that a finding of mental incompetency does not bar a parole revocation proceeding, although the Parole Board should consider the issue of competency as a "possibly mitigating or excusing" factor in the revocation process.

The Appellate Division, First Department reversed, granted Lopez's petition, and reinstated him to parole. "We agree with petitioner that the basic requirements of due process applicable to a parole revocation proceeding ... should now be construed to preclude going forward with such a proceeding in the event it is determined that the parolee is not mentally competent to participate in the hearing or to assist his counsel in doing so," it said, opining that otherwise, "the minimal due process rights" afforded in such proceedings "would be rendered useless." It declined to follow contrary rulings from the Third and Fourth Departments.

The Division of Parole urges this Court to "adopt the flexible approach followed for decades by the Third and Fourth Departments, as well as the federal parole system," which "allows revocation proceedings to go forward in cases of mental incompetence, so long as (a) counsel and other protections are provided, and (b) evidence as to the parolee's mental condition receives appropriate consideration by the administrative decision-maker.... In a range of other civil proceedings where a person's liberty is at stake -- including civil commitment, sex offender civil management, and deportation proceedings -- the assistance of counsel and other procedural safeguards have been held sufficient to satisfy due process in the case of a mentally incompetent individual."

For appellant Evans (Div. of Parole): Assistant Solicitor General Won S. Shin (212) 416-8808
For respondent Lopez: Elon Harpaz, Manhattan (212) 577-3300

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To be argued Thursday, February 12, 2015 (arguments begin at noon)

No. 35 Saint v Syracuse Supply Company

At the time of his accident, Joseph Saint worked for Lamar Advertising of Penn, LLC, installing and removing advertisements from large billboards. In April 2003, he was assigned to work on a billboard on property in Tonawanda owned by Syracuse Supply Company and leased to Lamar. The billboard, which rose 59 feet above the ground, had upper and lower catwalks to provide access. There were safety cables on all of the catwalks, but only the lower ones had guardrails. Saint's crew was told to remove the existing vinyl advertisement and extend the side of the billboard to accommodate a larger one. They made an extension from plywood, bolted angle iron onto the back to attach the extension to the existing structure, and raised it up to the billboard with a boom lift. Saint was on the lower catwalk and two coworkers were on the top one when they began to install the new advertisement, but he went up to help them when they struggled to control it in a high wind. He detached his lanyard from the safety cable to get around one of the workers and, before he could reattach it, a gust of wind struck the vinyl and knocked him off the catwalk.

Joseph Saint and his wife brought this personal injury action against Syracuse Supply as owner of the work site, alleging that the failure to place guardrails on the upper catwalk violated Labor Law §§ 240(1), 240(2) and 241(6). Section 240(1), which requires owners and general contractors to provide safety devices necessary to protect workers from elevation-related risks, applies when an employee is engaged in "altering ... a building or structure;" and section 240(2) requires safety rails on "scaffolding or staging" more than 20 feet from the ground. Section 241(6) requires owners and contractors "to provide reasonable and adequate protection and safety" for employees in "[a]ll areas in which construction ... work is being performed." Syracuse Supply moved to dismiss the suit, arguing the Labor Law did not apply because Saint was engaged in maintenance, not construction or alteration of the billboard.

Supreme Court denied the motion, saying Saint "was engaged in work ancillary to construction/alteration within the meaning of the statute at the time of the accident. The work crew ... had removed vinyl from one side of the billboard, were in the process of flipping the remaining vinyl to the other side so as to permit the crew to construct and install extensions on the remaining side.... It was in the course of their activities that plaintiff fell." The court found there was a question of fact as to whether Saint's failure to reattach his lanyard to the safety cable was the sole proximate cause of his fall.

The Appellate Division, Fourth Department reversed and dismissed the suit. "We agree with defendant that applying a new advertisement to the face of a billboard does not constitute the 'altering' of a building or structure for purposes of section 240.... Rather, that activity is 'more akin to cosmetic maintenance or decorative modification,' and is thus not an activity protected under section 240...." It said section 241(6) did not apply because Saint "was not engaged in construction work."

For appellants Joseph and Sheila Saint: Timothy Michael Hudson, Buffalo (716) 852-1000
For respondent Syracuse Supply: Brian P. Crosby, Buffalo (716) 856-4200

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To be argued Thursday, February 12, 2015 (arguments begin at noon)

No. 36 People v William Brown
No. 37 People v Patrick Thomas

Three officers in the New York Police Department's Cabaret Unit were patrolling near Times Square in December 2010 when they saw William Brown and Patrick Thomas run across Broadway looking back over their shoulders. They knew Brown by name and had arrested him twice; they knew Thomas by sight. Several hours earlier, one of the officers had encountered Brown in front of the nearby Lace nightclub and ordered him to leave. Two officers stopped and detained Brown and Thomas while their sergeant drove around the corner to Lace, where he found a man who said his watch had been stolen. The sergeant drove him to where the defendants were being held and he identified them as the thieves. An officer asked, "Where's the watch?," and Thomas pulled the victim's silver Rolex from his pocket. The officers also recovered $185 in cash from Thomas and $10 from Brown.

Supreme Court denied defendants' motions to suppress the identification, finding their brief detention was justified because the police had a reasonable suspicion that they had committed a crime. "I find that based on the knowledge the officers had..., that an ordinarily prudent and cautious man ... would have believed that criminal activity was at hand. The fact that Mr. Brown and Mr. Thomas were running at 4:30 in the morning and looking over their shoulders behind them would lead someone knowing of Mr. Brown and his prior criminal activities to believe that he had engaged in some sort of scam, and was fleeing a scene." Both defendants were convicted of grand larceny in the third and fourth degrees and fraudulent accosting. They were sentenced to 3½ to 7 years in prison.

The Appellate Division, First Department reversed in a pair of 3-2 decisions, ruling the forcible stop was unjustified. "No crime had been reported, the officers did not see anyone chasing the two men, and no apparent contraband was visible...," it said. "The officers' knowledge of [Brown's] prior criminality in the same neighborhood was not sufficient to give rise to reasonable suspicion.... The fact that the officers' observed [Brown] and Thomas running does not elevate the level of suspicion. Flight, accompanied by equivocal circumstances, does not supply the requisite reasonable suspicion.... The police did not observe conduct indicative of criminality, nor did they even possess information that a crime had occurred in the area."

The dissenters said, "A defendant's criminal history, or even an officer's recognition of a defendant from an earlier investigation, may be a factor in assessing reasonable suspicion.... Similarly, '[f]light, combined with other specific circumstances indicating that the suspect may be engaged in criminal activity,' may provide the necessary predicate to stop and detain a defendant.... The officers ... knew that [Brown] had a history of operating scams and victimizing tourists in the vicinity of the Lace nightclub, and they knew Thomas to associate with other people who engaged in such scams. This knowledge made it more reasonable for the officers to conclude that the two men were running away from the scene of a crime they had just committed in the vicinity of Lace...."

For appellant: Manhattan Assistant District Attorney David M. Cohn (212) 335-9000
For respondent Brown: Bruce D. Austern, Manhattan (212) 577-2523 ext. 514
For respondent Thomas: Hector Gonzalez, Manhattan (212) 698-3500

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To be argued Thursday, February 12, 2015 (arguments begin at noon)

No. 38 Matter of State Farm Mutual Automobile Insurance Company v Fitzgerald

New York City Police Officer Patrick Fitzgerald was riding in a Police Department vehicle driven by fellow officer Michael Knauss in January 2011, when an underinsured motorist collided with it, injuring Fitzgerald. He sought benefits under the supplementary uninsured/underinsured motorist (SUM) endorsement of Knauss's personal automobile policy from State Farm Mutual Automobile Insurance Company. The SUM endorsement defined an "insured" to include the policy's named insured, Knauss, and "any other person while occupying ... any other motor vehicle while being operated by [Knauss]." Fitzgerald demanded arbitration. State Farm refused to pay his claim and commenced this proceeding to stay arbitration, arguing he was not an "insured" for SUM coverage because a police vehicle is not a "motor vehicle" under the Vehicle and Traffic Law.

Supreme Court granted State Farm's petition to permanently stay arbitration, ruling Fitzgerald was not an "insured" within the meaning of the SUM endorsement of Knauss's policy. "Since a police vehicle is specifically excluded from the definition of motor vehicle as it appears in Vehicle and Traffic Law section 388(2), [Fitzgerald] is not an insured under the Knauss policy (see Matter of State Farm Mut. Auto. Ins. Co. v Amato (72 NY2d 288 [1988])," the court said.

The Appellate Division, Second Department reversed, ruling Fitzgerald was entitled to coverage "because he was a person occupying a 'motor vehicle' being operated by Knauss." It distinguished Amato and said that case did not require it to apply the definition of "motor vehicle" in Vehicle and Traffic Law § 388(2), which excludes police vehicles. Instead, it used Vehicle and Traffic Law § 125 to define "motor vehicle" as it appears in the SUM endorsement because the statute "is a general provision that defines the relevant terminology for the entire Vehicle and Traffic Law.... Police vehicles fall within the definition of a 'motor vehicle' under Vehicle and Traffic Law § 125 because they constitute a 'vehicle operated or driven upon a public highway which is propelled by any power other than muscular power'.... [T]his interpretation is consistent with common experience and the reasonable expectations of the average policyholder...."

State Farm argues Fitzgerald is not entitled to SUM benefits under Knauss's policy because a police vehicle is not a "motor vehicle" within the meaning of the endorsement. "Although the SUM endorsement does not define the term 'motor vehicle,' 'the neutral sources that brought [the SUM endorsement] into being' -- the text of the statute mandating the SUM endorsement (Insurance Law § 3420[f]), the statutory scheme, the statutory purpose of Insurance Law § 3420(f) -- all indicate that the Legislature intended to exclude police vehicles from the definition of 'motor vehicle.'"

For appellant State Farm: Henry Mascia, Uniondale (516) 357-3000
For respondent Fitzgerald: Frank Braunstein, Plainview (516) 937-1010