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.

NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

March 25, 2015

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Melanie Gray Courtroom
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State of New York Court of Appeals

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To be argued Wednesday, March 25, 2015 (in Syracuse; arguments begin at noon)

No. 62 Malay v City of Syracuse

Eileen Malay was in her Syracuse apartment in March 2007, when her landlord shot his wife and held his son and other relatives hostage inside the building. During a 24-hour stand-off, Syracuse Police Department learned Malay rented the first-floor apartment, but were unable to determine whether she was in it at the time. The police fired canisters of CS gas, a form of tear gas, into the building, including Malay's apartment. She called 911 and was evacuated, but her car was damaged and her apartment contaminated, and she was never allowed to return.

Malay brought an action in U.S. District Court for the Northern District of New York in June 2008, asserting claims for federal and state constitutional violations and common law negligence. On September 30, 2011, the court dismissed her federal claims and declined to exercise jurisdiction over her state law claims. She moved for reconsideration, which the court denied, then filed a notice of appeal to the U.S. Court of Appeals for the Second Circuit. Malay participated in a May 2012 pre-brief conference, but later decided to pursue her state law claims in state Supreme Court and she never perfected her federal appeal. She commenced this action in Supreme Court, Onondaga County on June 25, 2012. The Second Circuit dismissed her federal appeal effective July 10, 2012.

The Syracuse defendants moved to dismiss the state action as untimely, arguing the three-year statute of limitations had expired. Malay responded that the limitations period was tolled by CPLR 205(a), which generally allows a plaintiff six months to file a new action after a prior action is terminated. She argued the tolling period was not triggered until the Second Circuit dismissed her federal appeal, which did not occur until after she filed her state action.

Supreme Court granted the defense motion to dismiss the suit as untimely, saying "... the district court's summary judgment order of September 30, 2011 constituted a final decision on the merits. At that point, plaintiff's federal action was terminated and plaintiff had the option to commence a state action within six months." Rejecting Malay's argument that the six-month toll provided by CPLR 205(a) did not begin to run until her federal appeal was dismissed, the court said, "[P]laintiff's appeal from the district court's order was not dismissed on the merits but was instead dismissed because of plaintiff's default.... When an appeal is abandoned and dismissed on account of a default, the CPLR 205 grace period begins to run from the date the original order of [dismissal] was entered. In this case, the September 2011 order." The Appellate Division, Fourth Department affirmed without opinion.

Malay argues she was not required to pursue her federal appeal to a determination on the merits in order to invoke the CPLR 205(a) grace period. The statute has "long stood for the principle that a plaintiff should not be forced to bring concurrent causes of action in two judicial forums simultaneously solely to preserve a claim from being barred by the statute of limitations. Rather, judicial economy and the interests of justice logically and reasonably hold that a plaintiff is free to bring a cause of action at the termination of an appeal, whether the termination is due to a decision on the appeal against the plaintiff or by way of the plaintiff discontinuing the appeal voluntarily. This ... preserves the time and resources of all parties..., as well as the judiciary."

For appellant Malay: Frank S. Gattuso, Fayetteville (315) 451-3810
For respondents Syracuse et al: Asst. Corporation Counsel Ann M. Alexander (315) 448-8400

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To be argued Wednesday, March 25, 2015 (in Syracuse; arguments begin at noon)

No. 63 People v Clifford Graham

Syracuse police arrested Clifford Graham in August 2008 for allegedly passing counterfeit $20 bills at a motel and a convenience store. Detectives read his Miranda rights, which he waived, and asked about the source of the bills. Graham denied knowing the money was counterfeit. He was arraigned and jailed to await trial. Three weeks later, in September 2008, his assigned counsel arranged for him to speak with the detectives again in the hope that his cooperation would result in a better plea offer. The detectives did not administer Miranda warnings prior to this interview. Defense counsel was present for the first 20 minutes of the meeting, then left for another appointment. According to a statement written by the detectives, Graham told them a man he knew as "Taz" had offered to sell him $1000 in counterfeit currency for $100, but he declined the offer. Graham refused to sign the statement. He later moved to suppress his statements at the September interview on the ground they were involuntary and obtained in violation of his Miranda rights.

Supreme Court denied the motion to suppress. "[T]he defendant was in custody on the matter, represented by counsel on the matter and therefore he could not waive counsel on the matter unless counsel was present, which did occur," it said. "Once a counsel waiver occurred in counsel's presence and the client agreed to submit to the interview on the topic at hand, to wit: counterfeit bills, counsel's presence thereafter is not required." Graham was convicted of first-degree criminal possession of a forged instrument and petit larceny and sentenced to three to six years in prison.

The Appellate Division, Fourth Department affirmed, saying, "Inasmuch as defendant's counsel was present during the first 20 minutes of the interview and informed the detectives that defendant was willing to cooperate, it was permissible for the officers to infer from defendant's conduct and his attorney's assurances that defendant's waiver of his Miranda rights was made on the advice of counsel...."

Graham argues he is entitled to suppression of his September statements because the police did not advise him at that time of his right to remain silent and the consequences of foregoing that right and, therefore, he could not validly waive his rights. "Miranda created a bright-line rule that does not include a 'presence of counsel' exception," he says, and the lower courts "erred in holding that a valid waiver of Miranda could be assumed or inferred merely from counsel's presence.... While the presence of counsel may mitigate the coercive effect of custodial interrogation and help a suspect make a voluntary choice, it is the explicit warning of the right to remain silent that allows a suspect to make a knowing and intelligent decision to waive this fundamental right...."

For appellant Graham: Piotr Banasiak, Syracuse (315) 422-8191 ext. 0137
For respondent: Onondaga County Chief Asst. District Atty. James P. Maxwell (315) 435-2470

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To be argued Wednesday, March 25, 2015 (in Syracuse; arguments begin at noon)

No. 64 Matter of the Estate of Lewis

Robyn Lewis was living in Texas in 1996, when she executed a will naming her then-husband as her sole beneficiary and executor. In the event he predeceased her, the will named her husband's father, James Robert Simmons, as alternate beneficiary. Lewis and her husband later bought property in Clayton, New York, which had been in her family for generations. When they divorced in 2007, Lewis was awarded the Clayton property, which she made her permanent residence until she died in March 2010. She was survived by her parents, Meredith Stewart and Ronald Lewis, and three adult siblings. No will was found among her belongings.

In December 2010, Simmons filed a petition in Jefferson County Surrogate's Court to probate the 1996 will. He argued the testamentary disposition to his son, decedent's ex-husband, was revoked by the divorce, making him the sole beneficiary of the will. Decedent's family filed objections to probate including, among other things, an assertion that she executed a "second and lost will" in 2007 that revoked the 1996 will, thus requiring the estate to pass through intestacy to them. At the hearing, a neighbor testified that in late 2007 decedent gave her a will with an attorney's cover letter for safekeeping and they reviewed the documents together. The neighbor said the will revoked all previous wills and codicils, appointed decedent's mother as executrix, and distributed the Clayton property to her brothers. She said the document was signed by decedent and two witnesses and was notarized. The neighbor said she returned the lost will and other papers to decedent when she moved away in 2009.

Surrogate's Court dismissed the objections and admitted the 1996 will to probate. While it found the neighbor a "highly credible witness," it said her testimony did not establish due execution of the lost will, and so the lost will could not serve to revoke the 1996 will.

The Appellate Division, Fourth Department affirmed in a 4-1 decision, saying that under New York law, "a divorce operates to revoke testamentary distributions to former spouses only" and the nomination of Simmons as sole beneficiary remains valid. The neighbor's testimony about the lost will was insufficient to prove it was duly executed under the laws of New York or Texas and, thus, was insufficient to prove the 1996 will was revoked. Even if it found the decedent intended to change her will "in accord with a natural desire" to benefit her own relatives, it said, "it is not for the courts to circumvent the statutory requirements regarding the revocation of a will," which "must be effected with the same formality with which a will is executed or by some act of mutilation or destruction." It said the decedent's relatives failed to preserve their claim that the 1996 will was revoked by destruction.

The dissenter said, "[T]he record clearly establishes that decedent intended to, and did in fact, revoke her will dated July 15, 1996, both by execution of a subsequent testamentary instrument and by the presumption of physical destruction arising from the absence of the will among her personal possessions at the time of her death." Even if decedent's family failed to prove due execution of the lost will, "I conclude that the neighbor's testimony is sufficient to establish decedent's revocation of the 1996 Will.... I further conclude that admitting the 1996 will to probate is manifestly unjust and inequitable under the unique circumstances of this case inasmuch as it would defeat the purpose and spirit of EPTL 5-1.4 and contravene decedent's clear and unequivocal intent to revoke the 1996 will and to leave her limited estate to her own family."

For appellants Stewart et al: John A. Cirando, Syracuse (315) 474-1285
For respondent Simmons: Julian B. Modesti, Syracuse (315) 474-7541

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To be argued Wednesday, March 25, 2015 (in Syracuse; arguments begin at noon)

No. 65 People v Pernell A. Flanders

Pernell Flanders was charged with shooting John Thorington during a street fight in Utica in June 2010. Flanders allegedly struck Thorington on the head with a .380 caliber handgun and fired the weapon repeatedly at Thorington, who was accompanied by his fiancée. Witnesses said Flanders then retrieved a .22 caliber rifle from his car, which he also used to shoot at Thorington and in the vicinity of his fiancée. Thorington was wounded in his leg, abdomen, shoulder and neck. Flanders was indicted on charges of second-degree attempted murder, first-degree assault and, regarding shots fired near the fiancée, first-degree reckless endangerment.

The indictment alleged that Flanders committed the assault and reckless endangerment offenses with "a .380 semi-automatic pistol and a .22 rifle," and County Court instructed the jury at his trial that he was charged with firing the pistol "and" the rifle at the victims. During deliberations, the jury sent a note asking, as to those counts, "must we believe both guns were involved and fired by the defendant...?" Defense counsel argued that "the plain reading is both," but the court said, "I don't think there's any requirement that the District Attorney has to prove both guns were involved." Responding to the jury, the court said, "What must be proven to your satisfaction beyond a reasonable doubt, that either of the weapons were involved or both, as long as you find that there was a deadly weapon involved." Flanders was found guilty on all counts. He was sentenced to concurrent terms of 22 years for assault and attempted murder and a consecutive term of 2⅓ to 7 years for reckless endangerment.

The Appellate Division, Fourth Department affirmed in a 3-1 decision, rejecting Flanders' claim that the court's response to the jury constructively amended the indictment and rendered it duplicitous. "[T]he evidence established that defendant assaulted the victim and his fiancée in an attempt to seek revenge for the fiancée's alleged assault on defendant's sister. There was one motive and one impulse: to seek revenge. We see no distinction between a situation in which an assaulting defendant takes the time to reload one weapon and one in which the assaulting defendant takes the time to obtain a second weapon with the single impulse of continuing the ongoing assault.... [T]he fact that the multiple shots were fired from two separate firearms did not transform this continuing offense into two separate offenses."

The dissenter argued the assault and reckless endangerment counts were rendered duplicitous by the trial court's response to the jury note. She said Flanders engaged in "two distinct shooting incidents.... [D]efendant used the pistol during the course of a fist fight ... after the victim began to get the upper hand.... Following that initial altercation, after any perceived threat posed by the victim had seemingly subsided..., defendant returned to his vehicle, retrieved a rifle from the back seat, and began firing in an apparent attempt to end the victim's life.... Defendant acted on those separate impulses with an 'abeyance' between them.... Given the court's response to the jury note, it is not possible to know whether the jurors, individually or collectively, based their verdict upon the use of the pistol, the rifle, or both."

For appellant Flanders: John J. Raspante, Utica (315) 223-4122
For respondent: Oneida County Assistant District Attorney Steven G. Cox (315) 798-5766