

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 Wednesday, April 28, 2021 (arguments begin at noon)

No. 34 **Simmons v Trans Express Inc.**

Charlene Simmons worked for three years as a driver for Trans Express Inc., a Brooklyn-based charter bus operator, until she was terminated in June 2018. She sued the company for nonpayment of wages in Queens Small-Claims Court. After a trial before an arbitrator, the court awarded her a \$1000 judgment, which Trans Express paid in September 2018. One month later, Simmons filed this federal suit against Trans Express in U.S. District Court for the Eastern District of New York, contending the company violated the federal Fair Labor Standards Act and New York Labor Law by failing to pay her time-and-a-half for overtime hours she worked. Trans Express moved to dismiss the suit on the ground that her prior small claims action barred this federal suit under the doctrine of res judicata, or claim preclusion. In response, Simmons argued that New York City Civil Court Act § 1808 limits the preclusive effects of small claims judgments and allows subsequent litigation of claims “involving the same facts, issues and parties.”

Section 1808 states, “A judgment obtained under this article shall not be deemed an adjudication of any fact at issue or found therein in any other action or court; except that a subsequent judgment obtained in another action or court involving the same facts, issues and parties shall be reduced by the amount of a judgment awarded under this article.”

U.S. District Court dismissed the suit, finding that the doctrine of claim preclusion “plainly” applies to small claims judgments. The court said “the legislative history of [section 1808] makes clear that it concerns only collateral estoppel, or issue” preclusion, “as opposed to claim preclusion.... The legislative bill jacket ... makes clear that the very purpose of the bill was to clarify that ‘[t]he true intent of section 1808 is to make clear that a small claims judgment has no collateral estoppel or ‘issue preclusion’ effect in a subsequent proceeding.”

The U.S. Court of Appeals for the Second Circuit said it is unclear how the statute should be applied. “Section 1808 clearly contemplates a subsequent action ‘involving the same facts, issues and parties’ as the small claims court action. The statute even provides a set-off in those circumstances.... The text’s plain meaning thus strongly supports Simmons’s interpretation.” However, it said, “The New York Court of Appeals has yet to interpret Section 1808, and despite the appeal of Simmons’s textual interpretation, the conflicting decisions of the Appellate Division leave us unable to predict how the high court would rule.... Although the Appellate Division decisions to date all agree that small claims court judgments have some preclusive effect, they differ as to the contours of that effect.” The Second Circuit is asking this Court to resolve the issue by answering a certified question:

“Under [Section] 1808, what issue preclusion, claim preclusion, and/or res judicata effects, if any, does a small claims court’s prior judgment have on subsequent actions brought in other courts involving the same facts, issues, and/or parties? In particular, where a small claims court has rendered a judgment on a claim, does Section 1808 preclude a subsequent action involving a claim arising from the same transaction, occurrence, or employment relationship?”

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For respondent Trans Express: Emory D. Moore, Jr., Chicago, IL (312) 372-2000

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To be argued Wednesday, April 28, 2021 (arguments begin at noon)

No. 35 *People v William A. Wilkins*

William Wilkins and a codefendant, Kesian McKenzie-Smith, were charged with robbing or attempting to rob six people who were waiting in line for a Rochester store to open in August 2012. One of the victims, Montre Bradley, resisted and was fatally shot during the struggle. Both defendants were convicted at a joint trial of felony murder and of robbery and attempted robbery in the first degree. Wilkins is serving an aggregate prison term of 40 years to life.

On appeal, Wilkins argued he was entitled to a new trial because the trial court violated the rule in *People v Antommarchi* (80 NY2d 247 [1992]) by conducting sidebar conferences with prospective jurors in his absence. At one of the sidebars the trial judge excused the prospective juror for cause; and at another sidebar the defense counsel for McKenzie-Smith used a peremptory challenge to dismiss the prospective juror. Wilkins also contended the trial court erred by instructing the jury, without any request from him, that it was to draw no adverse inference from his failure to testify and that it was to draw no unfavorable inferences from the fact that Wilkins was in custody.

The Appellate Division, Fourth Department affirmed Wilkins's convictions in a 4-1 decision. Regarding the sidebar conferences, the majority said reversal is not required where "the defendant's presence could not have afforded him or her any meaningful opportunity to affect the outcome..., such as where a prospective juror is excused for cause" by the trial judge. It said the same held true for the other sidebar, where the codefendant's attorney used a peremptory challenge to the second prospective juror. It said "the record establishes that the court directed each defense counsel to independently exercise peremptory challenges, without input from the other defense counsel," and "that defense counsel for the codefendant exercised his peremptory challenges before defense counsel for [Wilkins]," demonstrating that the second juror was challenged "before [Wilkins's] defense counsel had any opportunity to consider whether to challenge that prospective juror. Thus..., under the circumstances of this case, [Wilkins] could not 'have provided valuable input..., or indeed any input, regarding the peremptory challenge of that prospective juror.'" The court said the trial judge's unrequested jury instructions to draw no adverse inferences were harmless errors because "the jury is presumed to have followed that instruction'...."

The dissenter said the judgment should be reversed due to the *Antommarchi* violation at the second sidebar, where Wilkins was not present when his codefendant's attorney struck a juror with a peremptory challenge. Citing CPL 270.25(3), which provides that multiple defendants in a joint trial share the defense allotment of peremptory challenges and a challenge is allowed only "if a majority of the defendants join in such challenge," he said "the record is wholly devoid of support for the majority's conclusion that the court directed defense counsel to proceed in disregard of the requirements of CPL 270.25(3)... [G]iven the 'presumption of regularity [that] attaches to judicial proceedings' ... and the lack of any evidence that the court deviated from the procedure set forth in CPL 270.25(3), I conclude that CPL 270.25(3) was being followed at the time of the relevant sidebar conference and that the assent of both [Wilkins] and the codefendant was therefore needed to use any of their joint peremptory strikes." Since Wilkins "could have provided his defense counsel with some 'valuable input' during the relevant sidebar conference from which he was absent," the *Antommarchi* violation requires reversal, he said.

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