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 Thursday, February 9, 2023

No. 16 Anderson v Commack Fire District

Courtney Anderson was injured in June 2012, when the car she was driving collided with a fire truck owned by the Commack Fire District and driven by volunteer firefighter John Muilenburg. The truck was responding to a fire alarm with its emergency lights and siren activated. Muilenburg testified that he stopped briefly at a red light, then drove slowly into the intersection where Anderson struck the fire truck broadside. She brought this personal injury action against the Commack Fire District and Muilenburg.

Supreme Court granted Muilenburg's motion for summary judgment dismissing the suit based on Vehicle and Traffic Law (VTL) § 1104, which allows operators of authorized emergency vehicles to drive through red lights and disregard other specified traffic laws. However, section 1104(e) provides that the statute "shall not relieve the driver ... from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others." The court said Muilenburg's conduct did not meet the reckless disregard standard.

The court denied the Fire District's motion to dismiss, finding it could be liable under General Municipal Law (GML) § 205-b, which states that "fire districts ... shall be liable for the negligence of volunteer firefighters duly appointed to serve therein in the operation of vehicles owned by the fire district..., provided such volunteer firefighters, at the time of any accident or injury, were acting in the discharge of their duties." The court said the district "has not eliminated the triable issue of whether Firefighter Muilenburg's actions constitute [ordinary] negligence and expose the Fire District to liability therefore."

The Appellate Division, Second Department affirmed in a 3-1 decision. Pursuant to GML § 205-b, the Fire District "was not limited to liability for conduct rising to the level of 'reckless disregard' under [VTL] § 1104(e), and could be held liable for the ordinary negligence of a volunteer firefighter operating the Fire District's vehicle...," it said. "Here, the defendants failed to eliminate triable issues of fact as to whether Muilenburg was negligent in the operation of the fire truck and if any such negligence contributed to the accident."

The dissenter argued that claims against the Fire District should be dismissed because "the reckless disregard standard of care under [VTL] § 1104(e) applies not only to the driver of the emergency vehicle, but also to those parties who are alleged to be vicariously liable for the driver's conduct.... [GML] § 205-b does not establish any particular standard of care for the operation of vehicles, and therefore, has no application to the determination of the vicarious liability claim against the Fire District.... The purpose of the statute is to 'immunize volunteer firefighters from civil liability for ordinary negligence'..., and to 'shift liability for such negligence to the fire districts that employ them'.... Thus, [GML] § 205-b functions merely as a liability shifting statute...." She said applying the reckless disregard standard to Muilenburg's conduct "compels the conclusion that there is no liability of Muilenburg for which to hold the Fire District vicariously liable."

For appellant Commack Fire District: Timothy C. Hannigan, Delmar (518) 869-9911
For respondent Anderson: Scott Szczesny, Woodbury (516) 746-8100

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To be argued Thursday, February 9, 2023

No. 17 People v Mark A. Hartle

Mark Hartle was convicted at trial in 2016 of four counts each of first-degree rape, criminal sexual act, sexual abuse and multiple related crimes stemming from his repeated rape of a 15-year-old girl in St. Lawrence County during the summer and fall of 2014, when he was 48 years old. He was ultimately sentenced to 43 to 50 years in prison.

After the judgment was affirmed on direct appeal, Hartle moved to vacate his convictions under CPL 440.10 based on claims of newly discovered evidence and ineffective assistance of counsel. He said the new evidence consisted of numerous sexual photographs and text messages he and the victim had exchanged in the summer and fall of 2014; that he had deleted those materials from his phone before his arrest because he "did not want anyone to see them" and other messages sent via Snapchat were automatically deleted; and that the deleted texts and photos were recovered in 2018 using newly developed technology. He submitted an expert's affidavit indicating that the technology needed to recover the deleted materials had not been available at the time of trial. Hartle had asserted his actual innocence at trial and claimed he had no sexual contact with the victim, but on this motion he argued that the recovered messages and photographs could have been used at trial to impeach the victim's testimony and to refute any claim of forcible compulsion.

` County Court denied the motion without a hearing, finding the materials recovered from Hartle's phone were not newly discovered evidence because he "concedes that he knew that the media existed prior to trial and that he actively endeavored to delete the evidence from his cell phone."

The Appellate Division, Third Department affirmed, saying Hartle's recovered messages were not "newly discovered" evidence because he "knew about their existence long before the trial.... Defendant focuses on the technological advances that have occurred since the trial that have made it possible to recover the text messages and photographs. However, although those technological advances themselves and their ability to recover the deleted material may be 'newly discovered,' that does not negate that defendant knew about the existence and content of the material from the time he received them.... [T]he 'new' technology allowed retrieval of the text messages and photographs that defendant himself deleted to avoid detection. To hold otherwise would create the rule that a defendant can destroy evidence he or she deemed inculpatory and then subsequently benefit from advances in technology to resurrect that evidence if it later appears beneficial."

Hartle argues "the elements of newly discovered evidence ... have been fully satisfied: the deleted text messages and photographs could not have been recovered before trial...;" they "were material to the issue of the relationship between appellant and [the victim]...;" they "were not merely impeachment or contradictory material, but substantive evidence relevant to elements of the charged crimes...; and the recovered text messages and photographs, had they been available and completely investigated by [prosecutors], would not only have resulted in a more favorable verdict for appellant, but may have resulted in no prosecution at all."

For appellant Hartle: John A. Cirando, Syracuse (315) 474-1285
For respondent: St. Lawrence County Asst. Dist. Attorney Matthew L. Peabody (315) 379-2225

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To be argued Thursday, February 9, 2023

No. 18 People v Andrew Regan

In August 2009, a female acquaintance accused Andrew Regan of having sexual intercourse with her without her consent after a night of bar hopping in the Town of Potsdam. The complainant reported the incident to the State Police the same day and a nurse collected DNA evidence during a hospital examination. In interviews with investigators and later through his attorney, Regan declined to provide a DNA sample and denied having sexual contact with the complainant. In November 2012, prosecutors applied for a search warrant to obtain Regan's DNA and the warrant was approved the same day. Regan was arrested in February 2013, days after the State Police forensic lab matched his DNA profile to the rape kit sample. A month later a prosecutor inquired through defense counsel if Regan would waive his speedy trial rights so she could prepare a plea offer, and he agreed with the "understanding" that a plea offer would be extended. No plea offer was ever made. Regan was indicted for rape in August 2013 and the prosecution declared its trial readiness two weeks later.

County Court denied Regan's motion to dismiss the indictment for violation of his constitutional and statutory rights to a speedy trial, although it found the pre-indictment delay was extensive and the prosecution's explanations – including "unfamiliarity with the ... procedure for obtaining a DNA sample from a prospective defendant" – "do not establish a good reason." The court said, "This procedure has been the law in this state since 1982, and is neither novel nor complicated," but it found "the seriousness of the charge and the absence of any demonstrated prejudice [to the defense] to be the paramount factors" in denying the motion.

Regan was convicted at trial of first-degree rape in 2015. He was sentenced to 12 years in prison.

The Appellate Division, Third Department affirmed the judgment in a 3-2 decision, splitting only on the constitutional speedy trial issue. The majority said "the preindictment delay of four years was lengthy and the reasons for the delay proffered by the People certainly left something to be desired. However, the People's submissions established that the investigation was ongoing, that they were acting in good faith and that there were valid reasons for portions of the delay.... In our view, the seriousness of the offense, the fact that defendant was not incarcerated pretrial and the absence of any demonstrated prejudice [to the defense] outweigh the four-year delay and the shortcomings in the People's reasons therefor...."

The dissenters argued that Regan's constitutional speedy trial rights were violated because "the People failed to proffer a good reason for the delay." They said, "Even if any unfamiliarity with the warrant application process to obtain defendant's DNA could be credited, the People still failed to adequately explain why, after the victim's initial report, more than three years passed before an order for defendant's DNA was sought.... Although the People ... represented that it was their first time applying for a search warrant for a DNA sample, there is no indication in the record that the People tried to educate themselves about the process or that they encountered any difficulties in preparing the application.... [T]o accept the People's excuse would be to sanction their ignorance of the investigative process, all at defendant's expense."

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For respondent: St. Lawrence County Asst. Dist. Attorney Matthew L. Peabody (315) 379-2225