State of New York
Court of Appeals

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NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

Week of May 1 thru May 2, 2018

State of New York
Court of Appeals

To be argued Tuesday, May 1, 2018 *(papers sealed)*

No. 65 Matter of Natasha W. v New York State Office of Children and Family Services

Natasha W. was arrested for shoplifting at a Bloomingdale's store in Manhattan in December 2012. A store detective, who detained her when she emerged from a fitting room with her five-year-old son, found an unpurchased coat hidden beneath her own coat and several concealed cell phone cases. He also found that two coats were hidden under her son's clothing and that he was wearing boots that were not paid for. Before she was taken into custody, she called her sister to pick up the child. Natasha ultimately pled guilty to disorderly conduct, a violation, which was later sealed. After an investigation, the New York City Administration for Children's Services (ACS) found the child maltreatment report against her was "indicated" because she had used her son in shoplifting and was arrested in his presence. It also concluded that the child was not "likely to be in immediate or impending danger of serious harm" and that "No Safety Plan/Controlling Interventions are necessary at this time." The State Office of Children and Family Services (OCFS) determined the report was relevant to employment in childcare, which could make it more difficult for Natasha to pursue her chosen career in early childhood education. An administrative law judge upheld the determinations, saying her conduct "creates an imminent risk to the child's emotional condition in that [he] will not control his impulses and will proceed from accompanying his mother in shoplifting to doing it on his own."

Supreme Court granted Natasha's petition to annul the indicated maltreatment report. It said her reported conduct did not meet the standard set in Nicholson v Scoppetta (3 NY3d 357), which said the Family Court Act "requires proof of actual (or imminent danger of) physical, emotional or mental impairment to the child," a standard that "ensures that [officials] will focus on serious harm or potential harm to the child, not just on what might be deemed undesirable parental behavior." Supreme Court said, "The danger described by the ALJ was not 'imminent'..., but was more in the realm of merely possible, the showing which the Nicholson court expressly rejected as inadequate."

The Appellate Division, First Department affirmed on a 3-2 vote, saying, "[T]here was no evidence before the ALJ that the child suffered any injury or required any treatment as a result of petitioner's conduct, and no evidence that petitioner had ever engaged in the behavior at issue at any other time. Instead, the only evidence at the hearing with regard to harm ... was the ACS finding that the child had not suffered any harm and that petitioner was not a danger to the child.... Instead of applying the correct legal standard to determine whether there was serious potential for harm requiring the aid of a court, the ALJ substituted his conjecture that the child might commit crimes in the future, even though the record reveals that the mother had no criminal history, that the child understood that his mother was arrested because she tried to steal, and that he was, by all accounts, calm, happy, well cared for, well behaved in school and not in need of any medical or mental health intervention."

The dissenters said the ALJ "rationally concluded that petitioner's actions in exploiting her five-year-old son to steal caused the child's mental and emotional condition to be in imminent danger of impairment. There can be no doubt that exploiting a child to steal and teaching a child that such behavior is acceptable has long-lasting consequences for that child's mental and emotional development at an age when the child primarily learns from observation of the parent's actions." They also said Natasha's conduct was "reasonably related to a position in childcare. As a matter of common sense, it should go without saying that an individual who utilizes her own child to commit a crime and teaches the child how to steal lacks the necessary judgment to care for children, and would serve as a poor role model for them."

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State of New York
Court of Appeals

To be argued Tuesday, May 1, 2018

No. 66 Brown v State of New York
No. 67 Brown, as administratrix, v State of New York

These claims against the State arose from a fatal collision in April 2003 at the intersection of State Route 350 and Paddy Lane in the Town of Ontario, Wayne County. Linda Brown was riding on a motorcycle with her husband on State Route 350, where the speed limit was 55 miles per hour. Henry Friend was driving his pickup on Paddy Lane, which had a stop sign at the intersection. He testified that he came to a full stop and looked both ways, saw no oncoming vehicles, then drove into the intersection in the path of the Brown's motorcycle, which struck his truck. Linda Brown was injured and her husband was killed. Friend pled guilty to failing to yield the right-of-way. Brown brought these actions against the State on behalf of herself and her husband's estate, alleging that the intersection was dangerous due to restricted sight lines from Paddy Lane, an excessive speed limit on Route 350, and inadequate signage.

The Court of Claims found that the intersection was dangerous and the State had prior notice of the hazards based on an Ontario Town Board resolution, which the Department of Transportation (DOT) received in 1999, and DOT data showing there had been at least 17 right-angle collisions involving failure to yield the right-of-way at the intersection between August 1996 and June 2002. However, the court dismissed Brown's claims because she did not prove that the State's failure to complete a safety study and take corrective action was a proximate cause of the accident.

The Appellate Division, Fourth Department reinstated the claims in a 3-2 decision, saying the trial court applied an improper standard in requiring Brown to prove the State's failure to complete a safety study was a proximate cause. "The appropriate inquiry was whether defendant was made aware of a dangerous condition and failed to take action to remedy it and whether the dangerous condition was the proximate cause of the accident." It said the trial court "properly determined with respect to defendant's negligence that claimant established that defendant had notice of the dangerous condition of the intersection and failed to take remedial action," thus establishing the State's "failure to maintain ... the intersection in a 'reasonably safe' condition." It remitted the matter for a determination of proximate cause.

The dissenters said Brown "was required to show more than that the potentially dangerous condition of the intersection was a proximate cause of her injuries and decedent's death. Rather, she was required to show what corrective action should have been taken by defendant and that such corrective action would have been completed before and would have prevented the accident." They agreed with the trial court that "it was pure speculation to conclude that a four-way stop -- the corrective action suggested by [Brown's] expert -- would have been in place before [her] accident even if defendant had undertaken a timely and adequate study."

On remittal, the Court of Claims found the State 100 percent liable, awarding Brown $3,963,292 for her injuries and $3,085,955 for her husband's death. Rejecting the State's claim that Friend was at least partially at fault, it said testimony "established that Mr. Friend carefully entered the intersection after looking both ways, but simply was unable to see the motorcycle ... at any time before the accident occurred." The Appellate Division affirmed.

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State of New York
Court of Appeals

To be argued Tuesday, May 1, 2018

No. 68 People v Theodore Wilson

When an ambulance was called to the Queens home of Theodore Wilson in 2011, the emergency medical technicians found that his live-in girlfriend had suffered numerous serious injuries, old and new. They took her to a hospital and notified the police, who arrested Wilson. He was indicted on two counts of first-degree assault, one alleging that he acted intentionally and the other alleging that he acted with "depraved indifference to human life" under Penal Law § 120.10(3), which applies when a defendant "recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes serious physical injury...." He was also charged with attempted murder and second-degree intentional assault.

At trial, one of the victim's doctors testified that she had multiple fractures of her ribs, spine, face, and sternum, and that she had suffered a life-threatening brain injury. He said the injuries had most likely been inflicted over a period of months. Wilson was convicted of first-degree depraved indifference assault and second-degree intentional assault. He was acquitted of attempted murder and first-degree intentional assault. He is serving 21 years in prison.

The Appellate Division, Second Department affirmed, saying, "Contrary to the defendant's contention..., the People adduced legally sufficient evidence to support the defendant's conviction of assault in the first degree under Penal Law § 120.10(3) beyond a reasonable doubt, as the evidence of the defendant's conduct supported a finding of depraved indifference (see People v Suarez, 6 NY3d 202, 212 [2005] ...)."

Wilson argues the evidence was insufficient to prove depraved indifference "because this incident involved a single adult victim whose injuries were solely the result of intentional conduct." The victim "suffered repetitive, non-accidental trauma that produced a variety of serious physical injuries, one of which, brain damage, could have resulted in death.... According to the People, these injuries were all caused by appellant's multiple physical beatings. On these facts, not only was appellant's alleged conduct clearly intentional, not reckless..., but this assault against an adult does not fit within the extremely narrow set of circumstances under which depraved indifference can be proven in a one-on-one offense." Suarez held that depraved indifference may be found where a defendant engages in "a brutal, prolonged ... course of conduct against a particularly vulnerable victim," but he said the Court "restricts this fact pattern to one-on-one assaults against children."

The prosecution argues, "This Court's precedents and common sense dictate that a defendant can intentionally cause serious physical injuries at the same time that he recklessly creates a grave risk of the victim's death.... Thus, defendant's contention that intentional conduct necessarily negates a finding of depraved indifference is incorrect. Equally unconvincing is defendant's assertion that an adult can never be a vulnerable victim.... [A] rational juror easily could have determined that defendant ... engaged in a prolonged campaign of brutal abuse -- which created a grave risk of death -- and that [the victim], initially because she was a recovering drug addict living in a new city without a support network, and later because she was physically and psychologically terrorized, was a particularly vulnerable victim."

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State of New York
Court of Appeals

To be argued Wednesday, May 2, 2018

No. 69 Matter of Brookford, LLC v New York State Division of Housing and Community Renewal

Margaret Schuette Friedman and her husband lived in a rent-controlled apartment at 315 Central Park West until March 2005, when her husband moved to an assisted living facility. He died there in November 2006 without returning to the apartment, and Friedman succeeded him as tenant of record. The owner of the building, Brookford, LLC, served an income certification form (ICF) on Friedman in April 2006. Two months later, Brookford filed a petition with the Division of Housing and Community Renewal (DHCR) seeking luxury decontrol of the apartment's rent under the Rent Regulation Reform Act of 1993, which permitted deregulation of apartments with monthly rents of more than $2,000 if the total annual income of the occupants exceeded $175,000 in each of the two years preceding the petition. Rent Control Law (RCL) § 26-403.1(a)(1) provides that "annual income shall mean the federal adjusted gross income as reported on the New York state income tax return. Total annual income means the sum of the annual incomes of all persons who occupy the housing accommodation as their primary residence...."

Friedman and her husband had filed joint tax returns for 2004 and 2005, the years to which the ICF applied, and their joint adjusted gross income would have exceeded the threshold for deregulation. However, Friedman contended her husband's share of the income on their joint returns should be excluded from the ICF because he no longer resided in the apartment when it was served, and so only her share of the adjusted gross income should be considered for the deregulation petition. DHCR agreed and, after verifying with the Department of Taxation and Finance (DTF) that Friedman's income did not exceed $175,000, DHCR denied Brookford's deregulation petition.

Supreme Court dismissed Brookford's suit challenging the decision, saying "the Legislature intended that only the income of occupants of a housing accommodation be taken into account in determining whether an apartment should be deregulated." It said, "Contrary to Owner's argument, the fact that, under federal and State tax law, neither the income, nor the resulting tax liability, listed on a joint return may be apportioned between the filers does not bar such apportionment in connection with deregulation proceedings.

The Appellate Division, First Department affirmed, saying the income of Friedman's husband was properly excluded based on the RCL's definition of total annual income "as the 'sum of the annual incomes of all persons who occupy the housing accommodation as their primary residence.' The record is clear that [Friedman's] husband was not an occupant of the apartment at the time the ICF was served." Since the Friedmans filed joint returns, "a calculation had to have been made as to the income of the sole occupant of the apartment," it said, and a memorandum of understanding between DHCR and DTF "was properly used" in determining that Friedman's income was below the threshold for deregulation.

Brookford argues, "The Legislature defined 'annual income' by using the well-settled term 'federal adjusted gross income as reported.' One of the most basic concepts in federal and New York State tax law is that jointly reported income cannot be divided and is wholly ascribable to *each* joint filer. The joint income is thus properly considered to be [Friedman's] income." It says apportionment of the jointly reported income "nullifies the as reported provision, because the 'apportioned' income was never reported to any taxing authority," and "also nullifies those statutory provisions that bar DHCR from demanding confidential tax information from tenants" and "nullifies those provisions ... that vest DTF with exclusive jurisdiction to verify tenant income."

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State of New York
Court of Appeals

To be argued Wednesday, May 2, 2018

No. 70 Matter of Lemma v Nassau County Police Officer Indemnification Board

Nicholas Lemma was a detective in the Nassau County Police Department (NCPD) when he was assigned to investigate a robbery, for which Raheem Crews was arrested in May 2005. Crews spent four months in jail, until prosecutors discovered that Crews had been in jail when the robbery occurred. Crews was released and the robbery charges were dismissed. Crews then sued the NCPD, Lemma, and others in federal court for false imprisonment and other alleged civil rights violations. In 2006, the Nassau County Police Officer Indemnification Board (the Board) determined that Lemma was entitled to defense and indemnification in the federal action pursuant to General Municipal Law § 50-1, which provides that Nassau County must indemnify its police officers in civil actions "from any judgment ... for damages, including punitive or exemplary damages, arising out of a negligent act or other tort of such police officer committed while in the proper discharge of his duties and within the scope of his employment."

In 2009, when Lemma was deposed for the Crews lawsuit, he revealed for the first time that he had learned five days after Crews was arrested that Crews was in jail on the date of the robbery and, therefore, had a complete alibi. Asked what he did with that information, Lemma testified, "I kept it to myself and said 'Let the chips fall where they may.'" Based on this admission, the Board reopened its original determination and, after a hearing, denied defense and indemnification to Lemma, finding the claims against him were not for actions in the proper discharge of his duties and within the scope of his employment, as required by the statute. Lemma filed this suit against the County, the Board and the NCPD to challenge the decision.

Supreme Court dismissed Lemma's suit, finding the Board's decision was not arbitrary and capricious. It said the "'proper discharge of duties' is performing one's duties correctly or appropriately.... The factual basis for the Board's determination that his actions were not in the proper discharge of his duties ... is found in Lemma's admission he knew Crews could not have committed the crime and, several days after Crews was arrested, chose to keep that information to himself. This was not an 'unintentional lapse' in the discharge of his duties but a conscious choice."

The Appellate Division, Second Department affirmed, saying, "The phrases 'proper discharge of his duties' and 'within the scope of his employment' were not intended to be interchangeable.... Rather, the word 'proper' was intentionally added to this statute ... to exclude indemnification for intentional misconduct.... Numerous letters in support of the bill reflected the worry that juries could improperly impose punitive damages on officers despite the fact that they 'acted with unquestioned good faith'.... Accordingly, the Board's interpretation of the statute ... was consistent with the statute and its legislative intent."

Lemma argues the decisions of the Board and the lower courts would "effectively repeal § 50-1" because the statute expressly provides for indemnification of punitive damages, and "no act that is so outrageous as to justify punitive damages could ever be determined to be proper." The statute does not require that an officer acted both "within the scope of his employment" and "in the proper discharge of his duties," he says, but instead "the terms must be applied interchangeably for the legislative intent to have full effect.... That the statute covers even conduct giving rise to punitive damages evinces the legislative intent not to restrict the benefits of the statute to employees performing their duties 'correctly' or 'appropriately.'"

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State of New York
Court of Appeals

To be argued Wednesday, May 2, 2018

No. 71 People v Princesam Bailey

Princesam Bailey and two fellow gang members were charged with assaulting another inmate at the Manhattan Detention Complex in October 2011. At their joint trial, Bailey's defense attorney repeatedly asked the victim during cross-examination whether one of the co-defendants had referred to him with an inflammatory racial epithet by calling him an "old n....r" prior to the assault. A juror suddenly interrupted the proceedings with an outburst directed at Bailey's attorney. As the judge tried to quiet her, the juror said, "Please, I am not going to sit here ... and having you say that again. Don't say it again or I am leaving.... I find it very offensive." After regaining control, the judge told the juror, "Ma'am, that's not appropriate from you;" and then instructed the attorney, "I don't want to hear it again.... You don't ask the same question over and over and over again. Move on." After a colloquy with counsel, Supreme Court said, "I don't believe [the juror] is grossly disqualified. The application for a mistrial is denied. The application to discharge is denied.... [I]f you look at the Court of Appeals decisions ... in [People v Mejias (21 NY3d 73)]..., unless it's clear on its face that a juror is grossly disqualified, that there is no need to question the individual juror.... I don't think there would be any basis to remove the juror without first establishing that she can't be fair and impartial. I don't think her statement indicates that she could not be, only that she found the repeated use of the phrase distasteful." The court gave the jury a curative instruction. Bailey was convicted of second-degree assault and sentenced to seven years in prison.

The Appellate Division, First Department affirmed, rejecting Bailey's claim that People v Buford (69 NY2d 290) required the trial court to inquire into the juror's fitness to serve. It cited its prior decision affirming the conviction of a codefendant, People v Wiggins (132 AD3d 514), which said the trial court "properly determined, based on its own observations, that no inquiry was necessary.... The juror's brief outburst telling the codefendant's counsel not to use a racial epithet 'again' ... demonstrated that she was bothered by the repeated use, at least four times, of the phrase, rather than by counsel's initial line of questioning.... In any event, a juror's mere annoyance with a question or with counsel would not be a basis for discharge...." The court also said the claim was unpreserved.

Bailey says the juror's outburst, "at the very least, required an inquiry into the juror's ability to be fair and impartial, and the court's failure to conduct one is reversible error that warrants a new trial. The juror's explosive reaction indicated more than mere annoyance. Instead, there is a grave risk that the juror was biased against Mr. Bailey based on his attorney's repeated use of what is almost certainly the most repugnant racial epithet in the United States." He acknowledges that a juror's mere annoyance would not be a "basis for discharge," but says his claim "is not focused on the question of 'basis for discharge' but rather the *basis for inquiry*. And again, without an individualized inquiry, there was insufficient information for the conclusion that the juror expressed 'mere annoyance,' as opposed to strong offense and bias that would seep into deliberations."

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