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.

NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

April 18 thru April 20, 2023

State of New York
Court of Appeals

To be argued Tuesday, April 18, 2023

No. 32 Lukasz Gottwald v Kesha Rose Sebert
No. 33 Lukasz Gottwald v Kesha Rose Sebert

Likasz Gottwald, an established music producer using the name Dr. Luke, signed 18-year-old aspiring singer Kesha Rose Sebert to an exclusive recording contract in 2005, a contract that gave his KMI production company the rights to her first six albums. Kesha's debut album in 2010 and follow-up albums produced by Gottwald were successful, but disagreements arose in 2012 and 2013 and Kesha sought to end her agreement with him or to obtain better terms. When settlement negotiations failed to resolve the dispute, she filed a lawsuit against Gottwald in California in 2014 alleging, in part, that he had sexually abused her shortly after the contract was signed in 2005. She alleged that he took her to two parties where both were drinking and that he then drugged her, took her to his hotel, and raped her. On the same day Kesha filed the California suit, Gottwald filed this defamation action against her in New York, alleging that her statements were false and that she made them knowing they were false in an effort to pressure him into relinquishing his contractual rights. He also alleged that Kesha, her mother, her attorneys and her public relations firm orchestrated a press and social media campaign to publish "false and shocking" accusations against him to increase the pressure. He further alleged that in 2016, after this suit was filed, Kesha falsely claimed in a text conversation with Lady Gaga that Gottwald had raped her and another female artist and that Lady Gaga then spread negative messages about him in the press.

Supreme Court granted partial summary judgment to Gottwald, ruling that he is not a public figure and, thus, is not required to prove that Kesha made false statements with actual malice; and that her text message to Lady Gaga was defamatory per se. The court also ruled a jury must decide whether Kesha's statements relating to her California lawsuit are protected by the litigation privilege because "there are sharply disputed questions of fact" about whether that suit was brought in good faith "or whether it was a 'sham' intended to ... defame Gottwald and obtain business leverage."

The Appellate Division, First Department affirmed on a 3-2 vote, splitting on the public figure issue. The majority said, "The record demonstrates that, while Gottwald is an acclaimed and influential music producer, he does not occupy a position of 'such pervasive fame or notoriety that he [has] become[ ] a public figure for all purposes and in all contexts' and that he did not 'become[ ] a public figure for a limited range of issues' by 'voluntarily inject[ing] himself' into the public debate about sexual assault, or abuse of artists in the entertainment industry...." The dissenters said Gottwald is a public figure who must prove actual malice because "over many years Dr. Luke has received broad and extensive press coverage as a music producer and, in particular, as a discoverer and developer of female music talent. He has pervasively sought out this publicity." They said that, "at a minimum, Dr. Luke should be treated as a limited purpose public figure" based on those publicity efforts and because the defamatory statements "directly relate to Dr. Luke's self-publicized professional and personal relationships with his clients, his integrity in business practices, and in attracting new talent...."

Supreme Court subsequently granted Kesha's motion for a ruling that Civil Rights Law § 76-a applied retroactively to claims that were pending when it took effect in 2020, which could have applied the actual malice standard to Gottwald's suit. The Appellate Division reversed, saying "there is insufficient evidence ... that the legislature intended its 2020 amendments to the anti-strategic lawsuit against public participation (anti-SLAPP) law ... to apply retroactively.... The fact that the amended statute is remedial, and that the legislature provided that the amendments shall take effect immediately, does not support the conclusion that the legislature intended retroactive application...."

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For respondents Gottwald (Dr. Luke) et al: Christine Lepera, Manhattan (212) 509-3900
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State of New York
Court of Appeals

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To be argued Tuesday, April 18, 2023

No. 43 Matter of St. Lawrence County v City of Ogdensburg

In the midst of a financial dispute with St. Lawrence County in 2021, the City of Ogdensburg unilaterally transferred responsibility for collecting delinquent property taxes from itself to the County by enacting Local Law No. 2 to amend its city charter. For decades, the City had collected delinquent taxes for itself and for the County, a role that required the City to pay the County the delinquent amount it was owed at the end of each fiscal year, with the City then attempting to reimburse itself by collecting the delinquent taxes through foreclosure or other means. Local Law No. 2 sought to reverse those roles by opting into Real Property Tax Law (RPTL) article 11, the "Uniform Delinquent Tax Enforcement Act," by repealing from the city charter any obligation of the City to enforce the payment of delinquent taxes "with the intent of all foreclosure responsibility defaulting to" the County. The County filed this suit contending that Local Law No. 2 violates article IX, § 2(d) of the State Constitution and Municipal Home Rule Law [MHRL] § 10(5), which provide in similar language that "a local government shall not have the power to adopt local laws which impair the powers of any other local government," and violates the terms of RPTL article 11.

Supreme Court declared Local Law No. 2 valid and dismissed the County's claims against the city. Rejecting the asserted violations of the State Constitution and MHRL § 10(5), the court said "the Local Law does not *impair* any *powers* of the County. To the contrary, the Local Law increases the County's tax enforcement powers with respect to delinquent City taxes."

The Appellate Division, Third Department affirmed in a 3-2 decision, saying the transfer of tax enforcement responsibility is constitutional and authorized by statute. "By adopting Local Law No. 2, the City amended its charter by deleting the provisions requiring the City to enforce the payment of delinquent taxes, leaving the County with that obligation under RPTL article 11...," it said. "As a consequence of the amendment, the City is no longer a 'tax district' for purposes of RPTL article 11 ... and the County treasurer becomes the enforcing officer.... As such, the County treasurer is statutorily required to credit the City for unpaid delinquent taxes upon the return at the end of the fiscal year (see RPTL 936). This outcome is neither an expansion nor impairment of the County's powers but simply a consequence of the statutory structure outlined in RPTL articles 9 and 11."

The dissenters argued the City violated RPTL article 11 by acting unilaterally, rather than by mutual agreement with the County. They said RPTL 1150 "expressly authorized 'tax districts ... to make agreements with one another with respect to any parcel of real property upon which they respectively own tax liens in regard to the disposition of such liens'" and the property itself. "This provision has been used to accomplish a variety of shared goals regarding delinquent real property taxes..., specifically including the establishment of the exact sort of arrangement that, here, the City unilaterally adopted and imposed upon the County following a breakdown of negotiations.... [T]he City's circumvention of RPTL 1150 renders Local Law No. 2 inconsistent with a general law, and it is therefore violative of the NY Constitution and the Municipal Home Rule Law." They argued the Local Law also impairs the powers of the County in violation of the Constitution and MHRL § 10(5) because it increased "the obligations that the County must fulfill with its own revenue and resources.... Local Law No. 2 impairs its power to fully control its own affairs, such as its budget and its workforce, by weakening that power...."

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For respondents City et al: Nicholas S. Cortese, Binghamton (607) 723-9511

State of New York
Court of Appeals

To be argued Tuesday, April 18, 2023

No. 35 People v Tyquan Johnson

Appealing his convictions for possession of heroin, cocaine, and marijuana, Tyquan Johnson contends that a Rochester police officer recovered the drugs from him during an unlawful search and seizure in 2015 and that the evidence should have been suppressed. The officer testified at the suppression hearing that he saw Johnson, who had been sitting in the driver's seat of a parked car, move to the passenger seat and move his torso from side to side. When he parked behind Johnson and activated his lights, Johnson stepped out through the passenger door and began to walk away, and the officer left his vehicle to follow. Johnson was trying to pull up his pants and buckle his belt as he walked, which the officer said made him concerned that Johnson might be armed because suspects commonly hide weapons in their pants. The officer asked him to "hold-up a minute," but Johnson did not respond. As he got closer, the officer said Johnson appeared to be nervous, but said he was not. The officer asked if he had any weapons and Johnson said he had "nothing." The officer said he became concerned for his safety and conducted a pat-frisk. He found no weapons, but felt what he thought was a bag of drugs in a pocket. Johnson said he had "nothing" in his pocket, but began to throw the contents onto the ground, including two small bags of what appeared to be marijuana, and held onto a clear bag of what appeared to be bundled packages of heroin. The officer arrested him for possession.

Supreme Court denied Johnson's motion to suppress, ruling the officer was justified at all four levels of analysis for police encounters adopted in People v DeBour (40 NY2d 210). The court said Johnson's movements inside the parked car gave the officer "an objective credible reason" to approach and ask for information. It said Johnson's efforts to pull up his pants and buckle his belt while walking away "supported a more intrusive, common-law inquiry." And his apparent nervousness, "combined with the officer's knowledge that armed individuals commonly used belts to secure weapons in the waistband of their pants," gave the officer "a reasonable basis to suspect Defendant posed a threat to his safety" and justified the pat-frisk. The court said Johnson then emptied the drugs from his pocket "on his own volition," providing probable cause for his arrest. Johnson was convicted of two counts of third-degree possession of a controlled substance and one of marijuana possession, and was sentenced to five years in prison.

The Appellate Division, Fourth Department affirmed, saying "the action taken by the police officer was justified in its inception and at every subsequent stage of the encounter...."

Johnson argues that his movements inside the parked car "clearly did not provide the justification necessary for the Level One approach" to request information; and his effort to buckle his pants while walking away did not provide the founded suspicion of criminality needed to justify the level two common law inquiry. He says his apparent nervousness and the officer's concern that grabbing and buckling his pants indicated that he might be armed, "especially in light of the fact that it is undisputed that he did not have a gun," did not provide the reasonable suspicion that he had committed or was committing a crime needed to justify the level three stop and frisk.

For appellant Johnson: Paul B. Watkins, Fairport (585) 377-9747
For respondent: Monroe County Asst. District Attorney Martin P. McCarthy, II (585) 753-4534

State of New York
Court of Appeals

To be argued Wednesday, April 19, 2023

No. 36 Scurry v New York City Housing Authority
No. 37 Estate of Murphy v New York City Housing Authority

The primary issue in these negligent security cases is whether the New York City Housing Authority (NYCHA) is liable for the deaths of residents of two of its buildings who were murdered by intruders who entered through doors with broken locks. NYCHA argued it was not liable because the murders were the result of "targeted" attacks that could not have been prevented by secure doorlocks. The Appellate Division issued conflicting decisions.

Bridget Crushshon was killed by her former boyfriend, Walter Boney, in the hall outside her Brooklyn apartment in 2007. Boney had been stalking and threatening her for a year before he choked Crushshon in the hallway and doused her and himself with a flammable liquid. When Bryan Scurry, one of her sons, pushed Boney off of her, Boney ignited the liquid and set them all on fire. Crushshon and Boney died of their injuries and Scurry was hospitalized for 15 months. Crushshon's estate and Scurry brought this negligence action against NYCHA, claiming Boney was able to enter the building through a door with a lock that had been broken for months. Supreme Court denied NYCHA's summary judgment motion to dismiss the suit, saying the facts "do not preclude the reasonable possibility that the often broken front door" was a proximate cause of the injuries.

The Appellate Division, Second Department affirmed, saying "the alleged longstanding nonoperability of a front door lock ... made it foreseeable that some form of criminal conduct could occur.... NYCHA failed to meet its prima facie burden to proffer any evidence that its alleged negligent maintenance of the door lock did not concurrently contribute to the execution of Boney's crime." It said the First Department had adopted a rule "that targeted attacks," as opposed to opportunistic crimes against random victims, "break the proximate causal link between the reasonableness of security measures by the property owner and the targeted crime itself. We respectfully disagree and hold ... that ... the issue of proximate causality may present a triable issue of fact" that a jury must decide.

In 2011, Tayshana Murphy was shot to death inside her NYCHA building in Manhattan by two gang members seeking revenge after a series of altercations with a rival gang, to which Murphy's brother and close friends belonged. She had been involved with several gang members in an assault on one of the gunmen hours earlier and was standing with them outside her building when the gunmen approached. Murphy's group fled inside through a side door with a broken lock and the gunmen followed. They shot Murphy three times after her group scattered. Her estate brought this action against NYCHA, claiming its negligent failure to maintain the doorlock was a proximate cause of her murder. Supreme Court dismissed the suit on summary judgment.

The Appellate Division, First Department affirmed. The gunmen "were intent on gaining access to the building" and "were bent on revenge," it said, and "considering that at least one other person ... entered the building at the same time, it does not take a leap of the imagination to surmise that [the gunmen] would have gained access to the building by following another person in or forcing such a person to let them in. This negates the unlocked door as a proximate cause of the harm that befell Murphy, and makes her assailants' murderous intent the only proximate cause." Responding to Scurry, it said "we are aware of no case in the First Department that suggests that a landowner would avoid liability even if minimal precautions would have actually prevented a determined assailant from gaining access. In reality, however, that is hardly ever the case."

No. 36: For appellant NYCHA: John F. Watkins, White Plains (212) 827-4501
For respondents Scurry et al: Brian J. Shoot, Manhattan (212) 732-9000
No. 37: For appellant Murphy: Steven Pecoraro, Manhattan (212) 344-5053 ext 1000
For respondent NYCHA: Patrick J. Lawless, Manhattan (212) 490-3000

State of New York
Court of Appeals

To be argued Wednesday, April 19, 2023

No. 38 People v Michael Saenger

Michael Saenger violated a stay-away order of protection in May 2016 by breaking into his former girlfriend's home in Queens and confronting her in her upstairs bedroom. When he placed his hands on her neck, she pepper sprayed him in the face and he fled, taking two of her identification cards with him. Police officers arrested him a short distance away, still teary-eyed and stumbling from the effects of the pepper spray. They found the ID cards in his wallet. Saenger was indicted on charges that included burglary, first and second-degree criminal contempt and, under Penal Law § 240.75, aggravated family offense.

Penal Law §240.75 provides, in part, that a defendant "is guilty of aggravated family offense when he or she commits a misdemeanor defined in subdivision two of this section as a specified offense and he or she has been convicted of one or more specified offenses within the immediately preceding five years." Second-degree criminal contempt is a "specified offense" listed in subdivision two and the prosecutor filed a special information stating that Saenger had been convicted of that crime in March 2015, satisfying the previous conviction requirement of the statute. Count six of the current indictment, which charged Saenger with aggravated family offense, did not identify which "specified offense" he had allegedly committed to support the charge, but simply said he "committed an offense specified in subdivision two of Section 240.75 of the Penal Law...." Count five of the indictment charged him with second-degree criminal contempt, but made no reference to count six.

Saenger did not challenge the jurisdictional validity of the indictment before trial. He was convicted of aggravated family offense and both contempt counts, and was sentenced to two to four years in prison. He argued on appeal that the indictment was jurisdictionally defective because it did not inform him of which "specified offense" supported the aggravated family offense count.

The Appellate Division, Second Department, vacated the second-degree contempt conviction as a lesser included offense and otherwise affirmed. It rejected his claim that the indictment was defective as "unpreserved for appellate review."

Saenger argues that, because the second-degree contempt charge "is clearly an essential element" of the crime of aggravated family offense, "an indictment's failure to specify any particular statute" or otherwise identify the misdemeanor underlying the more serious crime "is a jurisdictional defect that does not require preservation." He says the indictment "entirely failed to provide [him] with sufficient notice of the specific crime he was being charged with, as further shown by the uncertainty and confusion at the charge conference about what to instruct the jury regarding the 'specified offense,'" and as a result his aggravated family offense conviction should be reversed.

The prosecution argues that, "in charging an Aggravated Family Offense, [it] specifically cited Penal Law section 240.75, the statute defining that offense. This was sufficient, under well-established law, to satisfy the pleading requirements. Moreover, defendant had ample notice of the underlying offense that he was accused of committing. Indeed, only one offense on the indictment qualified under section 240.75(2), and that was Criminal Contempt in the Second Degree."

For appellant Saenger: Sam Feldman, Manhattan (212) 693-0085
For respondent: Queens Assistant District Attorney Danielle S. Fenn (718) 286-5838

State of New York
Court of Appeals

To be argued Wednesday, April 19, 2023

No. 39 Matter of Lynch v City of New York

The Patrolmen's Benevolent Association of the City of New York (PBA) and its president, Patrick Lynch, brought this suit against New York City and its Police Pension Fund (PPF), contending they improperly restricted retirement credit for prior public service by police officers in tier 3 of the retirement system to prior service as a police officer or firefighter. They contended that officers in tier 3, those who joined the NYPD after July 1, 2009, have the same rights as officers in tier 2 to obtain pension credits for prior service with most public employers in New York, whether in uniform or not. The City argued that under Retirement and Social Security Law (RSSL) article 14, which created tier 3, officers in tier 3 must complete at least 22 years of uniformed service as a police officer or firefighter in order to retire with full benefits.

On consideration of summary judgment motions by both sides, Supreme Court ruled largely in favor of the City. It focused on RSSL § 513(c)(2), which states, "A police/fire member shall be eligible to obtain credit for service with a public employer ... only if such service, if rendered prior to [July 1, 1976] by a police/ fire member who was subject to article eleven of [the RSSL], would have been eligible for credit in the police/fire retirement system or plan involved." The court said the effect of the statute was "to create equivalence between Tier 2 and Tier 3" for obtaining prior service credit, "but frozen in time so that Tier 3 members receive the same creditable service benefits as Tier 2 members [did] in 1976," when only police and fire service counted toward retirement eligibility.

The Appellate Division, First Department modified the order and granted summary judgment to the PBA on its statutory claims. "Article 14 of the [RSSL] establishes tier 3 employment but does not exclusively govern every right and benefit enjoyed by all tier 3 members," it said, citing Lynch v City of New York (35 NY3d 517 [2020]). It said RSSL § 513(c)(1) "provides eligibility requirements to obtain credit for service for prior service in defined public employment in the same terms as those enjoyed by tier 2 employees pursuant to [RSSL] § 446(c)." And it concluded that RSSL § 513(c)(2) "does not conflict" with the pension credit transfer, buy-back, and purchase statutes relied on by the PBA.

For appellant-respondent City: Assistant Corporation Counsel MacKenzie Fillow (212) 356-4378
For respondent-appellant Lynch & PBA: Robert S. Smith, Manhattan (212) 833-1100

State of New York
Court of Appeals

To be argued Thursday, April 20, 2023

No. 40 Matter of Teamsters Local 445 v Town of Monroe

This case arose after the Town of Monroe terminated Kathryn Troiano, the secretary to the Town Planning Board, without notice or explanation in 2017. Teamsters Local 445 filed a grievance challenging the termination on her behalf, contending that she was a member of its bargaining unit under the Union's collective bargaining agreement (CBA) with the Town and that she could not be terminated without notice of the charges and without following the grievance process agreed to in the CBA, including binding arbitration of disputes. Secretary to a planning board is classified as an exempt position under Civil Service Law § 41, which generally permits employers to make appointments without civil service examination and to terminate them without cause, but the Union's CBA provides that the Planning Board secretary is included in the bargaining unit and places no restrictions on the contractual protections that apply. The CBA excludes only one member of the bargaining unit from full protection, the bookkeeper to the town supervisor, which it says "is classified as an exempt position ... and, as such, the Union may not challenge such appointment or termination of such appointment through any administrative or legal proceeding." When the Town did not respond to its grievance for Troiano, the Union commenced this proceeding against the Town to compel arbitration.

Supreme Court denied the Town's motion to dismiss the suit, saying "the CBA clearly gave Troiano, in her capacity as planning board secretary, the right to pursue the grievance procedures and ultimately arbitration. The mere fact that she was exempt as a Civil Service employee did not bar the Town from providing her such protections as a matter of contract.... Contract provisions in collective bargaining agreements may modify, supplement or replace the more traditional forms of protection afforded public employees under the Civil Service Law."

The Appellate Division, Second Department affirmed, saying "there is no statutory, constitutional, or public policy prohibition against arbitrating this dispute regarding the termination of an employee in an 'exempt class' under the Civil Service Law.... Further..., the parties agreed, in their [CBA], to arbitrate the dispute. The CBA authorized the [Union] to file grievances, and ultimately demand arbitration, on behalf of bargaining unit employees, including the secretary to the Planning Board, irrespective of her class designation under the Civil Service Law." It further found that "a reasonable relationship exists between the subject matter of the dispute and the general subject matter of the CBA."

Supreme Court subsequently granted the Union's petition to compel arbitration.

The Town argues that exempt class employees are subject to termination at will and that submitting Troiano's termination to arbitration "would violate public policy by (1) contravening the legislature's decision-making when enacting CSL §§ 41(1), 75, and 76..., (2) impermissibly conflicting with the purposes of the merit and fitness requirements of [State Constitution] Article V, § 6, (3) essentially reclassifying a position without following the requirements of CSL § 20, and (4) stripping the appointing authority of its power to remove in contravention of the policy expressed in Article XIII § 2.... An act that would be void by resolution or local law cannot be made valid by instead insulating the act within a labor contract."

For appellant Town of Monroe: Brian D. Nugent, Nyack (845) 353-2000
For respondent Union: Louie Nikolaidis, Manhattan (212) 419-1500

State of New York
Court of Appeals

To be argued Thursday, April 20, 2023

No. 41 People v Dwight Reid

Dwight Reid was charged with murder and weapon possession for allegedly shooting Calvern Wallace between the eyes after an argument in a Manhattan bar in 2014. No eyewitnesses came forward, but the bar's manager identified Reid as the gunman from surveillance video that recorded the shooting.

Midway through his eight-day trial, Supreme Court closed the courtroom to all spectators for the last four days, which included witness testimony, summations, and the jury's verdict. A prosecutor moved to close the courtroom after informing the judge that photos and videos of Reid inside the courtroom had been posted on Instagram, some with the hashtag "Free Dick Wolf," Reid's nickname. The court said, "I will say that the people in the courtroom have been very intimidating. They intimidated a court reporter already. They stare people down. They're staring up here. I am closing this courtroom based on the fact that now there are pictures that were taken in this courtroom." Defense counsel objected, saying it would be fairer to require visitors to surrender their cell phones before entering the courtroom than to exclude everyone. The court denied the objection and said, "We closed the courtroom and I just want to say that I'm mindful of the sanctity of an open courtroom, I am, but this has been very cumulative." She said she was "concerned" when she saw a spectator hold up a phone as though taking photos, recounted how the court reporter "was very intimidated and very shaken" by her encounter with spectators outside the courtroom, and said, "I have felt the stares from the audience towards me.... [F]or all those reasons the presence of the spectators ... had a chilling effect on this courtroom and ... I have to close the courtroom. I don't believe there is a lesser remedy...." Reid was convicted of second-degree murder, two counts of weapon possession, and was sentenced to 50 years to life in prison.

The Appellate Division, First Department reduced Reid's sentence to 25 years to life and otherwise affirmed, saying, "The court's midtrial closure of the courtroom ... was a provident exercise of discretion under the extraordinary circumstances presented. The court made detailed findings regarding photos taken in the courtroom and posted online, and spectators' other conduct in the courtroom (some of which was directed at the court itself) and elsewhere in the courthouse. The court relied on undisputed facts, as well as its own observations of spectators' intimidating behavior and demeanor, the seriousness of which was not necessarily reflected in the cold record. The cumulative effect of all this misconduct by spectators in general established an overriding interest in closing the courtroom to prevent intimidation.... The only alternative to closure offered by defendant would have been ineffective...."

Reid argues that he was deprived of his constitutional right to a public trial "when the court closed the courtroom to all spectators midway through the trial based on the prosecutor's assertion that someone had taken cell phone pictures in the courtroom and posted them on the internet, as well as the court's own contention that certain spectators were 'staring' in an 'intimidating' fashion. The court neither held a Hinton hearing nor conducted any other fact-finding inquiry, and never determined who took the pictures or identified who among the spectators was 'intimidating.'" He says "defense counsel suggested the reasonable alternative of banning all cell phones from the courtroom," and the court's "failure to fairly consider or adopt an alternative to complete closure is a further constitutional error requiring reversal."

For appellant Reid: Richard M. Greenberg, Manhattan (212) 763-5075
For respondent: Manhattan Assistant District Attorney Rachel Bond (212) 335-9000

State of New York
Court of Appeals

To be argued Thursday, April 20, 2023

No. 42 People v Hanza Muhammad

Hanza Muhammad was charged with the murder of John White, who was shot ten times in a Syracuse parking lot in 2017. Dwayne Merritt, a friend of Muhammad, witnessed the shooting and testified as a key witness for the prosecution.

The trial judge explained to the County Court gallery that he had a standing policy of not allowing spectators to enter or leave the courtroom while a witness was testifying to prevent "spectator traffic" from distracting witnesses, attorneys, jurors, and the court reporter. On the morning Merritt was to testify, a number of people – including relatives and friends of the victim and of Muhammad – arrived early to make sure they could get in to watch. The courtroom doors were closed, but not locked, and court officers posted at the doors did not invite them to enter. They were not aware when Merritt began to testify and 40 minutes later, after defense counsel had begun to cross examine him and the waiting group of spectators had grown to about 20 to 25 people, a colleague texted the prosecutor to ask, "Is it a problem that the defendant's family was kept out of the courtroom for" Merritt's testimony? The prosecutor informed the court of the crowd waiting outside and the court paused the proceedings to allow them to enter.

The court held an evidentiary hearing the next day, saying "there may have been an unintentional misunderstanding that may have led to spectators not being present" for Merritt's testimony. After hearing from 11 witnesses and reviewing security video of the hall outside the courtroom, defense counsel moved for a mistrial, contending the court, through its "standing policy," had "delegated to the court officers the control over entry to the courtroom," which resulted in a violation of Muhammad's right to a public trial. The court denied the motion, ruling "there was no courtroom closure here." The hearing evidence established that the court itself did not exclude spectators and "that court security did not affirmatively act to close the courtroom to any spectator at a time when a witness was not testifying," it said. Spectators did not appear ask officers if they could enter "and merely assumed that they were not being permitted to enter." Muhammad was convicted of second-degree murder and weapon possession and was sentenced to 40 years to life in prison.

The Appellate Division, Fourth Department affirmed. "Although we do not approve of the court's standing policy of essentially locking the courtroom doors while witnesses are on the stand, defendant did not object to the court's policy and does not challenge it on appeal." It rejected his claim that "the court deputies are an extension of the court and that their malfeasance in the hallway should therefore be imputed to the court," saying a violation of the right to a public trial "requires an affirmative act by the trial court.... Here, people were excluded from the courtroom not by any affirmative act of the court, but instead by a confluence of factors outside the court's knowledge and control."

Muhammad argues, "County Court's officers were subject to its 'direction and control' ... and thus were its agents.... Accordingly..., the officers' exclusion of spectators was the court's exclusion of spectators – even if [the judge] did not knowingly authorize their exclusion. Certainly, the court itself must be responsible for the consequences of its officers' actions as they attempt to implement the court's own directives...." He also argues that his attorney's "failure to object to County Court's unconstitutional standing order forbidding spectator entry during witness testimony" violated his right to effective assistance of counsel.

For appellant Muhammad: Paul J. Connolly, Delmar (518) 439-7633

For respondent: Onondaga County Sr. Asst. District Attorney Bradley W. Oastler (315) 435-2470