# *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.**

To be argued Tuesday, June 2, 2015

**No. 119 Matter of State Farm Mutual Automobile Insurance Company v Fitzgerald**

New York City Police Officer Patrick Fitzgerald was riding in a Police Department vehicle driven by fellow officer Michael Knauss in January 2011, when an underinsured motorist collided with it, injuring Fitzgerald. He sought benefits under the supplementary uninsured/underinsured motorist (SUM) endorsement of Knauss's personal automobile policy from State Farm Mutual Automobile Insurance Company. The SUM endorsement defined an "insured" to include the policy's named insured, Knauss, and "any other person while occupying ... any other motor vehicle while being operated by [Knauss]." Fitzgerald demanded arbitration. State Farm refused to pay his claim and commenced this proceeding to stay arbitration, arguing he was not an "insured" for SUM coverage because a police vehicle is not a "motor vehicle" under the Vehicle and Traffic Law.

Supreme Court granted State Farm's petition to permanently stay arbitration, ruling Fitzgerald was not an "insured" within the meaning of the SUM endorsement of Knauss's policy. "Since a police vehicle is specifically excluded from the definition of motor vehicle as it appears in Vehicle and Traffic Law section 388(2), [Fitzgerald] is not an insured under the Knauss policy (see Matter of State Farm Mut. Auto. Ins. Co. v Amato (72 NY2d 288 [1988])," the court said.

The Appellate Division, Second Department reversed, ruling Fitzgerald was entitled to coverage "because he was a person occupying a 'motor vehicle' being operated by Knauss." It distinguished Amato and said that case did not require it to apply the definition of "motor vehicle" in Vehicle and Traffic Law § 388(2), which excludes police vehicles. Instead, it used Vehicle and Traffic Law § 125 to define "motor vehicle" as it appears in the SUM endorsement because the statute "is a general provision that defines the relevant terminology for the entire Vehicle and Traffic Law.... Police vehicles fall within the definition of a 'motor vehicle' under Vehicle and Traffic Law § 125 because they constitute a 'vehicle operated or driven upon a public highway which is propelled by any power other than muscular power'.... [T]his interpretation is consistent with common experience and the reasonable expectations of the average policyholder...."

State Farm argues Fitzgerald is not entitled to SUM benefits under Knauss's policy because a police vehicle is not a "motor vehicle" within the meaning of the endorsement. "Although the SUM endorsement does not define the term 'motor vehicle,' 'the neutral sources that brought [the SUM endorsement] into being' -- the text of the statute mandating the SUM endorsement (Insurance Law § 3420[f]), the statutory scheme, the statutory purpose of Insurance Law § 3420(f) -- all indicate that the Legislature intended to exclude police vehicles from the definition of 'motor vehicle.'"

For appellant State Farm: Henry Mascia, Uniondale (516) 357-3000
For respondent Fitzgerald: Frank Braunstein, Plainview (516) 937-1010

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**No. 107 Matter of Glick v Harvey**

In 2012, New York City approved New York University's plan for a major expansion of its Washington Square campus into two "super blocks" in Greenwich Village, including construction of academic buildings and housing for students and faculty. The super blocks were created as part of a slum clearance program in the 1950s and the City designated certain parcels it owned as streets to accommodate future road widening, although the parcels have remained open space since that time. Opponents of the NYU project -- including Assemblywoman Deborah Glick and other local leaders, neighborhood associations, historic preservation groups, and an NYU faculty association -- brought this article 78 proceeding to challenge the City's approval. Among other claims, they contended the City violated the public trust doctrine by authorizing NYU to build or encroach on four of the City-owned parcels of open space -- the Mercer Playground, LaGuardia Park, LaGuardia Corner Gardens, and Mercer-Houston Dog Run -- without approval from the State Legislature. They argued the parcels, all mapped as streets, had become protected parkland through long and continuous public use.

Supreme Court found the City had "impliedly dedicated as parkland" three of the parcels, all but the dog run, and thus had violated the public trust doctrine. It enjoined NYU from proceeding with construction involving those parcels "unless and until the State Legislature authorizes alienation of any parkland to be impacted by the project." The court said that "long-continued use of the land for park purposes may be sufficient to establish dedication by implication, despite the fact that the property is still mapped for long-abandoned street use. To rule otherwise would effectively eliminate the distinction between express and implied dedication of parkland. Here, petitioners have certainly shown long continuous use of the ... parcels as parks.... [T]here is extensive use of signage indicating some amount of management of the properties by the [Department of Parks and Recreation], and at least some intention of the City to identify the parcels as parks and encourage members of the public to consider and utilize them as parks."

The Appellate Division, First Department reversed the order and dismissed the suit, saying the petitioners "failed to meet their burden of showing that the City's acts and declarations manifested a present, fixed, and unequivocal intent to dedicate any of the parcels at issue as public parkland. While the City has allowed for the long-term continuous use of parts of the parcels for park-like purposes, such use was not exclusive, as some of the parcels (like LaGuardia Park) have also been used as pedestrian thoroughfares.... Further, any management of the parcels by the Department of Parks and Recreation was understood to be temporary and provisional, pursuant to revocable permits or licenses.... Moreover, the parcels have been mapped as streets since they were acquired by the City, and the City has refused various requests to have the streets de-mapped and re-dedicated as parkland...."

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For New York City respondents: Asst. Corporation Counsel Michael J. Pastor (212) 356-0838
For respondent NYU: Seth P. Waxman, Washington, DC (202) 663-6000

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**No. 108 Matter of Greater Jamaica Development Corporation v New York City Tax Commission**

Greater Jamaica Development Corporation (GJDC) was formed in 1967 as a charitable, not-for-profit corporation to promote business growth in Jamaica, Queens. It is exempt from federal taxation and is registered as a charitable organization in New York. In 1998, GJDC formed Jamaica First Parking, LLC (JFP) to own and operate public parking facilities in the community "on a nonprofit basis ... in furtherance of the charitable purposes of [GJDC]." JFP acquired four parking garages that had been owned by New York City and built a fifth on land purchased from the City. JFP provides below-market parking for local stores, residents and government employees. The Internal Revenue Service determined JFP's activities would not effect GJDC's federal tax exempt status because the parking operation was "substantially related to [GJDC's] charitable exempt purposes" and would "lessen the burdens of government."

In 2007, the City's Department of Finance [DOF] granted JFP a property tax exemption under Real Property Tax Law § 420-a, which exempts "property owned by a corporation or association organized or conducted exclusively for religious, charitable, hospital, educational, or moral or mental improvement of men, women or children purposes ... and used exclusively for carrying out thereupon one or more of such purposes." DOF revoked JFP's exemption in 2011, saying parking "does not fall into one of the enumerated uses set forth in 420-a.... Here, the parking lots are not incidental to another recognized charitable purpose but are the very purpose for which the property is being used." It said GJDC's exempt status under federal law "is not determinative of the issue of charitable use of the property as defined by 420-a." GJDC and JFP brought this proceeding to challenge the determination.

Supreme Court dismissed the suit. It said DOF had a rational basis for its action, including "case law that draws a distinction between public benefit and charitable purposes, as well as legislative history indicating the legislature's intent to construe the categories formed by section 420-a narrowly. On these facts this court cannot find that the DOF determination was made without a reasonable basis and therefore is without power to overrule that determination."

The Appellate Division, Second Department reversed and restored JFP's tax exemption, finding the revocation was arbitrary and capricious. "Absent a precise statutory definition of 'charitable purpose,' courts have interpreted this category to include relief of poverty, advancement of governmental and municipal purposes, and other objectives that are beneficial to the community.... Furthermore, a property owner ... which demonstrates that it is a not-for-profit entity "'whose tax-exempt status has been recognized by the [IRS] and whose property is used solely for [charitable] purposes has made a presumptive showing of entitlement to exemption'"...," it said. "Given that the petitioners' charitable purpose was to improve Jamaica's business district through further economic development, offering convenient and inexpensive public parking to attract visitors and businesses was central to their aim."

The City argues, "The Appellate Division's decision ignores the precedent of this Court which states that IRC 501(c)(3) [federal tax exempt] status has no bearing on eligibility for an RPTL 420-a real property tax exemption.... The ... decision is also contrary to both the mandate of the Legislature to narrow the categories eligible for mandatory tax exemptions and the well-established standard requiring that eligibility for tax exemptions under RPTL 420-a be strictly construed."

For appellant City: Assistant Corporation Counsel Vincent D'Orazio (212) 356-2133
For respondents GJDC and JFP: Ronald G. Blum, Manhattan (212) 790-4500

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**No. 113 People v Curtis Basile**

Responding to a complaint in 2007, an agent of the American Society for the Prevention of Cruelty to Animals (ASPCA) found a starving dog in the backyard of Curtis Basile's home in Queens. Basile admitted the dog, a long-haired mixed-breed named Danger, belonged to him. Basile, 19 years old, said he had lost his job and could not afford dog food or veterinary care, and he surrendered the dog to the agent. He was charged with animal abuse under Agriculture and Markets Law § 353, which states, "A person who overdrives, overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal..., or deprives any animal of necessary sustenance, food or drink, or neglects or refuses to furnish it such sustenance or drink ... is guilty of a class A misdemeanor...."

An ASPCA veterinarian testified that the dog was severely emaciated and dehydrated, a result of being deprived of proper nutrition for weeks or possibly months, and was "a step away" from death. Basile testified that he had tried unsuccessfully to find someone to take his dog and that he fed danger scraps from his plate whenever he had food to eat himself, sometimes only once a day. Criminal Court rejected his argument that the prosecutor was required to prove that he acted with a culpable mental state. It said the Legislature "intended that section 353 ... be a strict liability statute and that no intent or any mens rea need be proved by the People." Basile was convicted and sentenced to 3 years of probation and 45 days of community service.

Appellate Term for the 2nd, 11th and 13th Judicial Districts affirmed, saying section 353 requires no proof of a culpable mental state "insofar as it relates to the charge of failing to provide proper sustenance to an animal." It said, "Moreover, section 43 of the Agriculture and Markets Law provides ... that "[t]he intent of any person doing or omitting to do any ... act is immaterial in any prosecution for a violation of the provisions of this chapter'... [W]e do not read the word 'unjustifiably' in section 353 to relate to the words 'deprives any animal of necessary sustenance, food or drink....'"

Basile argues that, in view of "New York's strong presumption against strict liability" statutes, "the only interpretation of § 353 that is consistent with logic, fairness and the Legislature's intent is one that defines a crime of mental culpability. In particular, we submit that requiring proof that Mr. Basile acted 'knowingly' -- the same mental state that must be proved to convict a defendant of endangering the welfare of a child -- is properly reflective of the Legislature's intent." He says the court also erred by refusing to instruct the jury to consider whether his financial circumstances "could support a defense to the charge of 'unjustifiably injur[ing]' his dog."

For appellant Basile: Ben A. Schatz, Manhattan (212) 701-3000
For respondent: Queens Assistant District Attorney Nicoletta J. Caferri (718) 286-5859

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**No. 109 People v Howard S. Wright** *(papers sealed)*

Patricia Daggett was raped and murdered in Rochester in 1995. She had been strangled with a shoelace and her body, with hands tied behind her back, was left in a driveway. The case remained unsolved until 2006, when Howard Wright and an alleged accomplice were charged. The evidence against them was circumstantial, including testimony of witnesses who saw them with the victim in her car several hours before the murder and saw them without the victim, but with her car after the murder. One witness said Wright took him to the victim's car the next morning. There was also DNA evidence. Because the samples were a mixture contributed by several individuals, including the victim's husband, DNA analysis could not be used to identify a suspect with any degree of statistical certainty, but the prosecution's forensic expert testified that Wright could not be excluded as a contributor to samples collected from the victim's vagina, underwear and from the ligature that bound her hands.

The prosecutor argued in summation, without objection, that Wright and his co-defendant "left their DNA all over the crime.... We have Howard Wright's sperm in [the victim's] vagina. We have Howard Wright's sperm on [her] underwear, and we have Howard Wright's DNA profile included on the ligature that bound her hands together, the same identical ligature that is around her neck and strangled her to death.... This is a case of common sense and science.... The defendant's DNA is inside her, on her underwear, on the ligature that binds her hands." Wright was acquitted of rape, but convicted of second-degree murder and sentenced to 25 years to life.

The Appellate Division, Fourth Department affirmed in a 3-2 decision, finding legally sufficient evidence to support the conviction. "Here, several witnesses testified ... that defendant was with the victim in her vehicle before she was killed. The People also presented evidence that the victim was raped in her vehicle, and defendant's DNA could not be excluded from various pieces of evidence recovered therefrom.... [T]he People presented testimony establishing that defendant was seen with the victim's vehicle on the night she was killed" and that he took a witness to the vehicle the next day. The court said Wright did not preserve his prosecutorial misconduct claim and declined to review it as a matter of discretion in the interest of justice.

The dissenters said the claim should be reviewed, and argued Wright should get a new trial due to prosecutorial misconduct and ineffective assistance of counsel. "[W]e cannot conclude that the jury would have reached the same result had not the prosecutor both mischaracterized and emphasized the DNA evidence on summation.... Here, the testimony of the People's forensic expert put defendant in only a statistically-undefined ... class of people that could have contributed to the DNA, but the prosecutor argued to the jury that the analysis of the DNA established defendant as the DNA's contributor." They said defense counsel's "failure to object to the prosecutor's baseless transformation of evidence that defendant was in a group or class of people that could have contributed to the ... DNA samples to evidence that defendant was the sole possible contributor to those samples was so egregious and prejudicial that defendant did not receive a fair trial."

For appellant Wright: David M. Kaplan, Penfield (585) 330-2222
For respondent: Monroe County Sr. Asst. District Attorney Geoffrey Kaeuper (585) 753-4674