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 reargued Tuesday, April 26, 2016

No. 74 People v Terrance Mack

Terrance Mack was charged with gang assault in the first degree for his alleged participation in a September 2007 brawl, during which Latasha Shaw was beaten and stabbed to death by a large number of people in Rochester. Only one eyewitness identified Mack as a participant. During jury deliberations, County Court declared a recess and told the attorneys they would address any questions or concerns raised by the jury when they returned. The jury sent the court three notes during the recess. The first note said "we would like to have the instructions regarding the importance of a single witness in a case versus multiple witnesses and the instructions about the meaning of reasonable doubt read back to us." The second note asked "to hear [the eyewitness's] testimony regarding Terrance Mack's leaving of the crime scene" and requested "more jury request sheets." The third asked for a smoking break. Upon reconvening, the court read the notes into the record and indicated it would read the requested instructions, but before it did so, the jury sent another note saying it had reached a verdict. The court recessed for 16 minutes, then accepted the jury's guilty verdict without responding to the notes. Mack was sentenced to 25 years in prison.

The Appellate Division, Fourth Department reversed and ordered a new trial in a 3-1 decision, finding that "the core requirements" of CPL 310.30 were triggered by the jury's requests for readbacks of legal instructions and "a portion of the testimony of the sole witness who had identified defendant," and that Mack was "seriously prejudiced" by the trial court's failure to respond. "[A]lthough defense counsel failed to object to the court's procedure of accepting the verdict without responding to the jury's notes, the failure of the court to provide a meaningful response to the substantive requests of the jury is a mode of proceedings error for which preservation is not required...." It said the "request for a readback of the instruction on reasonable doubt, the determination of which is the crux of a jury's function, and for a readback of the instruction regarding 'the importance of a single witness in a case versus multiple witnesses,' 'demonstrates the confusion and doubt that existed in the minds of the jury with respect to ... crucial issue[s].... The jury is entitled to the guidance of the court and may not be relegated to its own unfettered course of procedure'...."

The dissenter said the jury, "by issuing a note stating that it had reached a verdict, impliedly rescinded its outstanding notes requesting a readback of certain instructions and certain testimony, and County Court therefore did not err in concluding that 'the jury had resolved its questions and was no longer in need of the requested information'...." He also argued that any error was unpreserved. "Although providing a meaningful response to notes from the jury is clearly among the court's 'core responsibilities' under CPL 310.30..., the statute does not expressly require the court to respond to a note that is followed by an announcement from the jury that it has reached a verdict.... In my view, the court's failure to respond to the outstanding jury notes, even if error, was not so significant or prejudicial as to constitute a fundamental flaw in the criminal process."

For appellant: Monroe County Assistant District Attorney Geoffrey Kaeuper (585) 753-4674
For respondent Mack: Nicolas Bourtin, Manhattan (212) 558-4000

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, April 26, 2016

No. 69 People v Ronald D. Rossborough

Ronald Rossborough was charged in 2010 with engaging in a criminal scheme in several Western New York and Southern Tier counties, using stolen checks to buy jewelry, stereo equipment and other expensive merchandise at stores, then returning the items for cash refunds. In Wyoming County, he pled guilty to a felony count of third-degree grand larceny in exchange for a sentence of three to six years in prison, to run concurrently with sentences imposed in other jurisdictions, and an order to pay $2,500 in restitution.

At his plea proceeding in Wyoming County Court, Rossborough orally agreed to waive his right to be present at his sentencing after the court told him he had "an absolute right to be here for the sentencing." He also executed a written waiver of his right to appeal, a waiver the judge explained would include "anything surrounding your arrest, your conviction here today or the sentence that I impose as long as I stay within the agreed time." The court later imposed the promised sentence in his absence.

On appeal, Rossborough contended the court violated CPL 380.40 by sentencing him in absentia. The statute states, "The defendant must be personally present at the time sentence is pronounced," but contains an exception allowing a defendant's written waiver of the right to be present "[w]here sentence is to be pronounced for a misdemeanor or for a petty offense."

The Appellate Division, Fourth Department affirmed, saying, "Defendant's valid waiver of the right to appeal encompasses his contention that County Court erred in sentencing him in absentia.... In any event, defendant's contention lacks merit. The record establishes that defendant waived his right to be present at sentencing, having specifically requested at the plea proceeding that he be permitted to waive his personal appearance at sentencing...."

Rossborough argues that "a plain reading of the statute prohibits courts from allowing a defendant to waive his presence for sentencing on a felony." The terms of CPL 380.40 "are plain, clear, and unambiguous, and nothing is left for interpretation: the statute requires the presence of a defendant for sentencing proceedings, and the only exception to this rule applies to misdemeanors and petty offenses -- not felonies."

For appellant Rossborough: Christine Seppeler, Rochester (315) 573-4077
For respondent: Wyoming County Assistant District Attorney Eric R. Schiener (585) 786-8822

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, April 26, 2016

No. 100 People v Anthony Parson, Jr.

Anthony Parson, Jr. was charged with second-degree criminal possession of a weapon after police stopped his car for vehicle infractions in Buffalo in October 2011. The arresting officer testified at a suppression hearing that, as he approached Parson's car from the opposite direction on Fillmore Avenue at about 11 pm, he saw the windshield was cracked and something was hanging from the rearview mirror, which would violate the Vehicle and Traffic Law. When he stopped the car and Parson rolled down his window, the officer said he smelled "burnt marijuana" and asked Parson, who admitted he had been smoking. The officer and his partner frisked Parson, finding a bag of marijuana in his pocket, then searched the car and found a .22 caliber revolver and several blunts. Defense counsel did not cross-examine the officer about a vehicle inventory form, prepared after Parson's arrest and signed by the officer, which said there was "no damage" to the car.

Erie County Court denied Parson's motion to suppress his statements and the gun, saying the officer's observation of "a large crack in the windshield" provided "sufficient grounds for stopping the vehicle." Parson subsequently pled guilty to the weapon charge and was sentenced to three and a half years in prison.

The Appellate Division, Fourth Department affirmed in a 4-1 decision, saying the officer "properly stopped defendant's vehicle upon observing violations of Vehicle and Traffic Law § 375 (22) and (30)." Rejecting Parson's claim that his attorney provided ineffective assistance in failing to cross-examine the officer about the vehicle inventory form, it said the form "is not a part of the record on appeal, and therefore defendant's contention must be raised in a motion pursuant to CPL article 440...." It found defense counsel otherwise provided effective assistance, saying Parson "received an advantageous plea inasmuch as he received the minimum sentence for his conviction. Defense counsel cross-examined the officer about the object that was hanging from the vehicle's mirror, and asked the officer if the lighting conditions were 'enough' to 'be able to see the cracked windshield.' In addition, defense counsel made a persuasive argument ... that the officer's testimony regarding the cracked windshield was not credible and that there 'was really no probable cause for the stop of that vehicle.' The fact that the court did not agree with defense counsel's assessment ... does not amount to ineffective assistance of counsel."

The dissenter said the vehicle inventory form "directly contradicts" the officer's testimony that a crack "covered most of the windshield," but he agreed with the majority that defense counsel's failure to pursue it must be raised in a CPL 440 motion. However, he argued defense counsel "did not adequately explore the circumstances of the subject traffic stop. In particular..., he did not inquire in detail concerning the lighting conditions present at the time of the stop; the proximity of the vehicle defendant was driving to a streetlight; the weather at the time of the traffic stop; or the location of [Parson's car] in relation to the officer's location when he allegedly observed the crack in the windshield. I thus conclude that defense counsel's deficient cross-examination was tantamount to a failure to supply County Court with a rationale to grant suppression..., and that defendant was denied effective assistance of counsel thereby...."

For appellant Parson: Deborah K. Jessey, Buffalo (716) 853-9555
For respondent: Erie County Assistant District Attorney Ashley R. Lowry (716) 858-2424

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, April 26, 2016

No. 76 People v Leroy Carver

In July 2009, Leroy Carver was the front seat passenger in a car that was stopped at about 4:30 a.m. in the Village of Fairport by a police officer who said he had seen an object hanging from the rear-view mirror and a sticker on the windshield, both traffic infractions. Neither Carver nor the driver could produce identification and both gave false names, birth dates and addresses. When the officer returned to his patrol car to check the information, the driver fled and the officer detained Carver. During a frisk, the officer found a camera in Carver's coat pocket, and inside the car he found a wallet, two laptops, more cameras, binoculars, a cell phone and other items that were later found to have been stolen from nearby houses burglarized that morning. A DNA test linked Carver to gloves found in the car. His defense attorney did not move to suppress any of the evidence. Carver testified that he had been drinking with two companions the night before, fell asleep in the car, and woke up shortly before the traffic stop, unaware that his friends had been breaking into houses. He was convicted of two counts of second-degree burglary and sentenced to 15 years in prison.

Carver argued on appeal that he was deprived of effective assistance of counsel by his attorney's failure to seek suppression of the evidence, among other errors. He contended the evidence was seized after an illegal traffic stop and his unlawful detention and arrest.

The Appellate Division, Fourth Department affirmed on a 3-2 vote. There was no basis to challenge the stop in view of the officer's testimony that he observed traffic infractions that would justify a stop, it said. Carver's detention was justified by circumstances -- the driver had fled, Carver tried to flee, they had no identification, and the car contained bags of property and gloves, "unusual" in mid-summer -- which provided reasonable suspicion he had committed a crime. It rejected the dissenters' argument that the standard for gauging an attorney's ineffectiveness in failing to file a motion is whether the motion "had more than little or no chance of success." While "the Court of Appeals has repeatedly stated that '[t]here can be no denial of effective assistance ... arising from counsel's failure to "make a motion ... that has little or no chance of success...,"" it said, "the Court was explaining what does not constitute ineffective assistance of counsel.... [T]he Court has made clear in other cases that the standard to be applied is whether defense counsel failed to file a "colorable motion...." Adopting a federal definition of colorable claim as one with "a fair probability or a likelihood ... of success," it said "we do not believe that a motion to suppress evidence as the product of an unlawful arrest would likely have been granted."

The dissenters, citing People v Caban (5 NY3d 143), argued the proper test for the ineffective assistance claim "is whether the motion at issue had more than little or no chance of success and, if so, whether there is no strategic ... explanation for the failure to bring that motion...." They concluded Carver was denied effective assistance by "his counsel's failure to seek suppression of the evidence seized as a result of the alleged traffic infraction. We note that the officer ... allegedly observed the items giving rise to the alleged ... traffic infractions while the vehicle ... was moving and under the cloak of darkness. Given the totality of the circumstances here, we conclude that the motion had more than little or no chance of success...." They said there was no strategic reason not to file a suppression motion, which "could have been dispositive of the entire proceeding."

For appellant Carver: Janet C. Somes, Rochester (585) 753-4329
For respondent: Monroe County Assistant District Attorney Scott Myles (585) 753-4541

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, April 26, 2016

No. 86 People v Martesha Davidson

Martesha Davidson was employed at the Finger Lakes Residential Center, a state facility for male juvenile delinquents in Tompkins County, when she was accused of striking a 14-year-old resident in the face in December 2013. The special prosecutor of the Justice Center for the Protection of People with Special Needs, a state agency created in 2012, charged Davidson with misdemeanor counts of endangering the welfare of a child and second-degree harassment in Town Court for the Town of Lansing. Executive Law § 552(2)(a) gives the special prosecutor "the duty and power ... to investigate and prosecute offenses involving abuse or neglect ... committed against vulnerable persons by custodians...."

Davidson moved to dismiss the charges, arguing the special prosecutor lacked authority to prosecute cases in local justice courts based on Executive Law § 552(2)(c). The provision states, "The special prosecutor ... may, after consultation with the district attorney as to the time and place of such attendance or appearance, attend in person any term of the county court or supreme court having appropriate jurisdiction ... or appear before the grand jury thereof, for the purpose of managing and conducting in such court or before such jury a criminal action or proceeding...." Because the provision mentions only County Court and Supreme Court, Davidson said it limits the special prosecutor's powers to those two courts. The special prosecutor argued that an amendment to CPL 1.20(32) included the Justice Center's special prosecutor in the definition of "district attorney" and that Executive Law § 552(2)(a) expressly authorized her to investigate and prosecute the abuse or neglect of vulnerable persons in any court in the state.

Town Court dismissed the charges, holding that the language of section 552(2)(c) permits the special prosecutor to prosecute cases only in County Court and Supreme Court. "I believe the lack of jurisdiction is presently provided by statute," it said.

Tompkins County Court reversed and reinstated the charges, saying "Rather than a limitation on the special prosecutor's authority, the language [of section 552(2)(c)] is an additional grant of authority permitting participation in and prosecution of felonies before the grand jury and the appropriate superior court. The requirement that the special prosecutor consult with the district attorney about time and place serves only to assure that the proceedings are conducted properly, particularly regarding the activities of the grand jury." The court did not address Davidson's claim that the authorizing statute was an unconstitutional delegation of prosecutorial authority to an unelected official, saying the claim was raised for the first time on appeal.

The Attorney General, as amicus curiae, argues that "if the Act is read to grant independent prosecutorial power to the Special Prosecutor, it would violate the Constitution's commitment of the State's prosecutorial power to County District Attorneys and the Attorney General. Long-standing constitutional rules bar the Legislature from transferring essential functions of elected constitutional officers to officers selected by appointment." He says this Court should construe the statute to require the special prosecutor to act with the consent of an elected district attorney. He also says the special prosecutor may be able to act in cases like this one under the common law authority of law enforcement officers to prosecute non-felony offenses with the consent of the district attorney.

For appellant Davidson: Robert R. LaLonde, Ithaca (607) 277-6863
For amicus curiae Attorney General: Solicitor General Barbara D. Underwood (212) 416-8022
For respondent Special Prosecutor: General Counsel Robin A. Forshaw (518) 549-0200