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 Wednesday, February 17, 2016

No. 39 Matter of Perlbinder Holdings, LLC v Srinivasan

Perlbinder Holdings owns five adjacent lots on Second Avenue near the Manhattan entrance to the Midtown Tunnel, and on its building facing 37th Street it had an illuminated advertising sign that was a legal, non-conforming use. The City Department of Buildings (DOB) ordered it to demolish the vacant building with the wall sign in 2008, and Perlbinder obtained a DOB permit to erect a freestanding structure to hold a replacement sign on adjacent lots at Second Avenue and 36th Street. However, when Perlbinder applied for a permit to install the new sign -- a double-sided, illuminated sign -- DOB objected based on the sign's location, height and surface area. Perlbinder sought reconsideration, and Manhattan Building Commissioner Chris Santulli approved the new sign permit in October 2008. In 2010, after Perlbinder installed the sign, DOB audited its prior permits and found Perlbinder's sign was not lawfully approved. DOB revoked the sign structure permit in 2010 and revoked the installation permit in 2011.

Perlbinder appealed to the Board of Standards and Appeals (BSA) and argued, in part, that it built the new sign in good-faith reliance on Santulli's approval of its permit in 2008. It did not apply for a variance. BSA upheld DOB's revocations, finding the new sign was in a different position and location and was more non-compliant with zoning than the original. BSA did not consider Perlbinder's claim of good faith, saying "the doctrine [is] limited to zoning variance applications" and "the courts have not extended the principle to interpretive appeal cases." Perlbinder brought this article 78 proceeding to annul the decision and reinstate the sign permits.

Supreme Court dismissed the suit, saying BSA's determination was rational and the double-sided sign "could not properly be considered a replacement" for the wall sign. Regarding the claim of good-faith reliance, it said case law "made plain that estoppel is not available against an agency even when correction of its prior erroneous determination leads to harsh results."

The Appellate Division, First Department reversed and remanded for BSA to determine whether Perlbinder is entitled to a variance, saying BSA erred in concluding it could not consider Perlbinder's good faith. It said NY City Charter § 666(7) "provides that in determining ... appeals, BSA may 'vary ... any rule or regulation or the provisions of any law relating to the construction ... of buildings or structures ... where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the law, so that the spirit of the law shall be observed, public safety secured and substantial justice done'.... BSA failed to appropriately address this charter provision, despite a request by [Perlbinder]. Indeed, to the extent [Perlbinder] sought relief based on its good-faith reliance, [its] appeal before BSA was, in effect, a request for a variance." The court said, "The record establishes as a matter of law that [Perlbinder] relied in good faith upon the 2008 determination."

The City argues the Appellate Division erred in construing Perlbinder's appeal as a variance request and remanding for BSA to consider Perlbinder's good-faith reliance under City Charter § 666(7), and also in deciding the issue of good-faith reliance rather than leaving that to BSA in the first instance. Perlbinder argues it is entitled to maintain its sign as of right, without remand to BSA for a variance, due to its good-faith reliance on DOB permits approved in 2008.

For appellant-respondent Perlbinder: Howard Grun, Manhattan (212) 687-1700
For respondent-appellant City: Assistant Corporation Counsel Jane L. Gordon (212) 356-0846

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To be argued Wednesday, February 17, 2016

No. 40 Matter of Kenneth S. *(papers sealed)*

In this juvenile delinquency case, Kenneth S. moved to suppress physical evidence -- an air pistol with a magazine capacity of 6 BBs -- found during a warrantless search of his backpack in October 2012. Two police officers testified that they approached Kenneth, a 15-year-old Bronx resident, when they saw him walking with a friend in Manhattan during school hours. Officer Sergio Merino said a partner had previously arrested him for robbery. Merino said Kenneth told him he had left school early to attend a program, but admitted that his mother thought he was in school, so Merino decided to take him to the precinct and call his mother. When Kenneth's pack bumped the police car, Merino said it made "a noise that I thought sounded like when my gun hits the car." Kenneth denied there was anything dangerous in his pack. He removed the pack at the request of Merino, who handed it to Officer James Diaz. Diaz said he immediately "felt the handle of a firearm" and told Merino to handcuff Kenneth. Merino ordered him to put his hands behind his back, but he kept them on the hood of the car, saying "how he can't go back. He just got out. The judge is going to be mad at him." As Diaz helped Merino finish handcuffing him, Kenneth's friend began cursing at them and other bystanders joined in. The officers placed Kenneth in the back seat and Merino sat next to him, trying to hold the bag away from Kenneth's side. Merino said he looked into the bag "as soon as I got in the car," then removed the BB gun at the precinct.

Family Court denied the motion to suppress, finding the officers "had the authority to detain" Kenneth when he admitted he was truant. It said "the escalating circumstances, especially [Kenneth's] repeated denials of there being anything in the bag after the bag had clearly made a metal sounding noise clunking against the police car," justified seizure of the bag and recovery of the BB gun. Kenneth then admitted to possession of the air pistol. The court determined he was a juvenile delinquent and placed him on probation for 18 months.

The Appellate Division, First Department affirmed, saying, "The police lawfully detained [Kenneth] as a suspected truant" and "lawfully patted down" his pack based on the "distinctive metallic sound" it made hitting the car. "The warrantless search of the bag, after [Kenneth] had been handcuffed and placed in the police car, was justified by close spatial and temporal proximity, as well as by exigent circumstances...," including "the fact that [he] resisted arrest, the officers' knowledge that [he] was on probation in connection with a past robbery..., the officers' high level of certainty that the bag actually contained a weapon, and the danger of [Kenneth] reaching the bag, despite being handcuffed, while seated ... next to the officer who had the bag."

Kenneth argues, in part, "The police may not conduct a warrantless search of a bag after reducing it to their exclusive control so that it is not within a handcuffed suspect's grabbable area.... It was not realistically possible for the handcuffed juvenile to have overpowered Officer Merino, reached across him into the bag, and removed the gun." He also says the BB gun must be suppressed as the fruit of an illegal truancy detention because the police "may not arrest a juvenile and take him to the precinct for being a truant" under Education Law § 3213(2)(a), which states that officials making truancy arrests "shall forthwith place the minor so arrested" at an educational facility.

For appellant Kenneth S.: Raymond E. Rogers, Manhattan (212) 577-3544
For respondent Corporation Counsel: Asst. Corporation Counsel Ronald E. Sternberg (212) 356-0840

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To be argued Wednesday, February 17, 2016

No. 41 Matter of Springer v Board of Education of the City School District of the City of New York

Grant Springer, a tenured teacher of catering at the Food and Finance High School in Manhattan for nine years, resigned in January 2011 to pursue a career as a corporate chef. He soon decided to return to teaching and was hired to teach catering in October 2011 by the principal of the Wadleigh Secondary School for the Performing and Visual Arts in Manhattan. Springer did not apply to withdraw his resignation under Chancellor's Regulation C-205(29), which states that tenured teachers who resign "shall, remain tenured and, upon written request, be permitted to withdraw such resignation subject only to medical examination and the approval of the Chancellor, provided that reinstatement is made on or before the opening of school in September next following five years after the effective date of resignation."

The principal was replaced during the school year and the new principal informed Springer in April 2012 that he did not have tenure. He then submitted to the Board of Education a written request to withdraw his resignation, but was told his request was too late and would not be processed. He received an unsatisfactory performance rating in May 2012 and the new principal terminated him as a probationary teacher in June 2012. Springer brought this article 78 proceeding against the Board of Education to challenge his termination.

Supreme Court granted the Board's motion to dismiss the suit as premature "for failure to exhaust administrative remedies."

The Appellate Division, First Department affirmed. "There is no question that [Springer] failed to comply with the ... Chancellor's Regulation Nos. C-205 (28) and (29), which govern withdrawal of a resignation and restoration to tenure," it said. "Hence, when [he] was rehired by a principal, his tenure was not ipso facto restored. We reject [Springer's] contention that his tenure was constructively restored by his rehiring."

Springer argues he "never lost tenure" under the language of C-205(29), which states that a resigning teacher shall remain tenured, so "it was unnecessary for his tenure to be restored." He says he properly withdrew his resignation when he submitted his request in April 2012, within the five-year limit, and each time he applied for a teaching job in the district. He also argues the Board violated his due process rights, as a tenured teacher, when he was dismissed without a just cause hearing under Education Law § 3020-a.

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To be argued Wednesday, February 17, 2016

No. 47 People v Reginald Powell *(papers sealed)*

Reginald Powell was charged with murdering Jennifer Katz in her home in the Village of Mamaroneck in December 2010, after he was stopped by police for a traffic infraction in Manhattan while driving her car and tried, unsuccessfully, to escape on foot. He told the police he had found the body of a friend in her bedroom closet several days earlier, was afraid he would be accused of the crime because he was on parole, and so he fled in her car after taking some of her jewelry. He denied having sexual relations with the victim. He made similar statements to detectives from Mamaroneck, and told them his brother Warren Powell had lived with Katz for about five years, ending the previous spring. DNA tests matched Reginald Powell to samples from the victim's body, underwear and bedding, and excluded his brother.

The trial court admitted cell phone evidence from the prosecution that Warren Powell had been in the vicinity of the victim's home at around the estimated time of the murder and evidence that he had access to the home. When the defense sought to present evidence that Katz had named Warren Powell as the beneficiary of her $500,000 life insurance policy to show that he might have had motive to kill her and to "lay a foundation[] in case I want to make a third party accusation," the court refused to admit it because the defendant had not actually accused his brother. It said, "[T]hat is an essential element of third-party culpability[,] you actually have to accuse somebody. Instead, what we're saying is it might have been Warren Powell..., we are not saying he did it, but who knows, the defendant didn't do it...." Noting the "tenuous link of an insurance policy which may or may not have been known" to Warren Powell, the court said, "At the moment there is insufficient evidence to permit this" under the balancing test in People v Primo (96 NY2d 351). Reginald Powell was convicted of first-degree murder and other crimes, and was sentenced to life without parole.

The Appellate Division, Second Department affirmed. Regarding the life insurance policy, it said, "The Supreme Court properly precluded the defendant from presenting evidence of third-party culpability, since the proposed evidence was based on mere speculation...." It also rejected Powell's claims that the trial court did not provide a "meaningful" response to a jury note seeking clarification of the element of intent on the murder count, and that it improperly considered uncharged crimes in imposing sentence.

Reginald Powell argues, "The evidence established Warren Powell had an opportunity which was not remote in time or place to commit the crime. The trial court's exclusion of evidence of motive based on financial gain or jealousy which was relevant to the jury's determination of reasonable doubt denied appellant's constitutional right to present a complete defense." He says the Primo standard for admitting evidence of third-party guilt "is unduly burdensome for a defendant" and should be changed to "include inquiry as to whether the proffered evidence could create a reasonable doubt as to the defendant's guilt."

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