

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 Thursday, January 14, 2016

No. 19 People v Lawrence Watson

When police officers tried to stop Lawrence Watson and Toi Stephens in a midtown Manhattan park in October 2009, both men fled -- Watson in his wheelchair, allegedly discarding a .38 caliber handgun before he was apprehended. Watson was charged with weapon possession and resisting arrest, and attorney Robert Fisher of New York County Defender Services (NYCDS) was assigned to represent him. Stephens, charged with drug possession, pled guilty to a misdemeanor drug count two months later.

On the eve of Watson's trial in June 2010 Fisher, who had been trying unsuccessfully to locate Stephens as a potential witness, informed Supreme Court that he had just discovered while reviewing Rosario material that another NYCDS attorney represented Stephens on the drug charge. Fisher said his supervisors concluded this created a conflict of interest and they told him he could not examine Stephens' file and must cease his efforts to locate him, but they also believed Watson could waive the conflict if he chose. The court told Watson that, if Fisher remained his defense counsel, he could not call Stephens as a witness and, if the prosecutor called Stephens, he could not cross-examine him. When Watson said he did not want to relieve Fisher and indicated he was willing to waive any conflict, the court said, "[W]e are in a difficult position now where I see [Fisher] being placed in a position where he just would not be able to effectively represent you." The court disqualified Fisher and appointed new defense counsel. Watson was convicted of two counts of criminal possession of a weapon in the second degree and resisting arrest, and was sentenced to 20 years to life in prison.

The Appellate Division, First Department reversed and remanded for a new trial on a 4-1 vote, finding there was "no conflict or potential conflict of interest" on which to base Fisher's disqualification. "Here, there was no indication or allegation that Fisher ever used or was privy to any confidential information regarding Stephens.... It is undisputed that Fisher never personally represented Stephens and was not involved in the adjudication of his case.... [H]e would thus not have been placed in the 'awkward position' ... of having to balance a duty of confidentiality while conducting either a cross-examination or direct examination. There was no risk that Fisher could disclose Stephens' confidences since he did not have any knowledge of them, and, therefore, no potential conflict of interest could have arisen as a result of Fisher representing Watson."

The dissenter said, "The Sixth Amendment affords a criminal defendant the right to representation by counsel; it does not guarantee the absolute right to representation by a particular attorney.... Where, as here, the chosen attorney is prohibited by a conflict of interest from conducting a thorough investigation, including interviewing a potential favorable witness, and would be prohibited from cross-examining that witness if called by the People, the attorney is unable to ensure that he will provide his client with an effective defense. Under these circumstances, even though the defendant expresses a willingness to waive any conflict, the exercise of the trial court's broad discretion to disqualify the attorney, to preserve the defendant's right to effective representation, will not be disturbed...."

For appellant: Manhattan Assistant District Attorney Dana Poole (212) 335-9000

For respondent Watson: Renee M. Zaytsev, Manhattan (212) 402-4100

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 Thursday, January 14, 2016

No. 20 Matter of Exeter Building Corp. v Town of Newburgh

In 2002, Exeter Building Corp. sought site plan approval from the Town of Newburgh for a 136-unit town house development on 28.9 acres of land it bought two years earlier. Located in an R-3 zoning district, Exeter's "Madison Green" development would have been a permitted use. In 2005, it obtained Planning Board approval for a "lot-line change" to exchange 1.4 acres of its parcel with a neighboring subdivision. In 2006, the Town enacted a new zoning ordinance (Local Law No. 3) that re-zoned Exeter's property to R-1, which does not allow high-density developments like Madison Green. Exeter sued to invalidate the new ordinance, litigation that ultimately led to a ruling that Exeter could proceed with the approval process for its project under an exemption from the re-zoning until January 2009. In 2007, the Planning Board passed a resolution giving Exeter site plan approval subject to numerous conditions. By that time, Exeter had incurred \$359,000 in engineering and review costs. In 2008, Exeter obtained a series of specific permits to, among other things, demolish a house and two water tanks; erect signs; perform clearing and grading of the site; begin road construction and install pad sites for some residences; and complete stormwater management work. Exeter spent \$182,000 on this work and satisfied some of the conditions for site plan approval, but many conditions remained unmet when the exemption period ended in January 2009. When the Planning Board and Zoning Board of Appeals (ZBA) determined that the Madison Green parcel had become subject to the new R-1 zoning restrictions and Exeter was not entitled to a building permit, Exeter brought this action against the Town, the boards and individual officials to annul the determination.

Supreme Court annulled the ZBA determination and declared that Exeter had a common law vested right to develop its property under the R-3 zoning regulations. It said Exeter "demonstrated a commitment to the purpose for which it was granted subdivision approval and [has] effected substantial changes to the real property, incurring substantial expenditures, which would be rendered essentially valueless if the municipal action of the zoning change were to be applied."

The Appellate Division, Second Department reversed the judgment and confirmed the ZBA determination, finding Exeter had no vested rights to develop Madison Green under the prior zoning regulations. The Planning Board "never granted unconditional approval of the ... site plan," it said. "Indeed, since [Exeter] did not fulfill the conditions precedent that were delineated in the Resolution, the chairperson was not authorized to sign the site plan. Accordingly, [Exeter] could not establish that [it] had vested rights to develop Madison Green under the Resolution." It said Exeter "may not ground a claim of common-law vesting upon reliance on the limited permits that were issued" for site work. "None of those permits ... either singly or together amounted to the Town's approval of Madison Green. Thus, [Exeter's] expenditures and construction in reliance on those limited permits could not satisfy the prerequisite for common-law vesting of the right to construct the entire project."

Exeter argues it has vested rights to build Madison Green. "The common law vesting doctrine is not, and never was, limited to whatever specific permits were authorized at any particular time. It has always been a test focused on whether, by dint of legally valid permits, there were substantial changes made and substantial expenses incurred to further the development which it was legally permitted to pursue."

For appellants Exeter et al: Richard B. Golden, Goshen (845) 294-4080

For respondents Town of Newburgh et al: Michael H. Donnelly, Goshen (845) 294-9447

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 Thursday, January 14, 2016

No. 21 Torres v Jones (and another action)

Maria De Lourdes Torres was indicted for the murder of Einstein Romeo Acuna, who was stabbed 20 times in his Queens apartment in September 2002. She was held in jail awaiting trial for four years, until the district attorney moved to dismiss the charges in 2007 and she was released. Torres then brought these actions for malicious prosecution, false arrest and federal civil rights violations against New York City and the detectives who handled her case.

Detectives questioned Torres at her apartment after finding records of several calls between her and Acuna near the time of his death, then she went voluntarily to the precinct for further questioning. After initially denying she knew Acuna, Torres admitted she had been romantically involved with him for about a year, he regularly paid her for sex, and she had sex with him at his apartment on the day he was killed. She returned to the precinct two weeks later and submitted to a one-hour polygraph test in the morning, which the examiner described as inconclusive. She was advised of her Miranda rights that night. Detective Irma Santiago said in her examination before trial (EBT) that Torres confessed after about two hours of questioning and Santiago wrote a summary of the confession, which Torres signed. Torres said that, after 11 hours of questioning, Santiago wrote a statement without her input and promised to let her go if she signed it. The police searched her room, but none of the evidence recovered tied her to the crime. The lead detective conceded that Torres's confession was not consistent with evidence at the crime scene and that the police were unable to corroborate it. Forensic testing, completed several months later, indicated Acuna was stabbed during an altercation with one or two males. Torres's DNA was not found at the crime scene. Several officers and the lead detective agreed in EBTs that the forensic evidence and inconsistencies in the confession merited further investigation, which they did not conduct.

The defendants moved for summary judgment dismissing the complaints, arguing Torres's confession provided probable cause for her arrest and the grand jury indictment created a presumption of probable cause. In response, Torres submitted an affidavit of her expert witness, a former NYPD homicide detective, who said the "defendants deviated from good and accepted police standards ... by failing to make further inquiry when a reasonable investigating homicide detective would have done so ... and by demonstrating an intentional or reckless disregard for proper procedures or otherwise acting in bad faith." He said the detectives coerced the confession with the promise to let Torres go "because of a strong policy that was pervasive throughout the police department to quickly ... close out investigations so that statistically it would appear that the police department was quickly solving crimes, particularly homicides."

Supreme Court dismissed the civil rights claims under 42 USC § 1983 against the City and detectives based on their "clear showing of probable cause" to arrest and detain Torres. It dismissed her malicious prosecution and false arrest claims, finding Torres failed to rebut the presumption of probable cause created by the grand jury indictment. The Appellate Division, Second Department affirmed for similar reasons.

Torres argues the evidence raised issues of material fact regarding the voluntariness of her "false confession" and the "bad faith conduct" of the detectives, thus rebutting the presumption of probable cause created by the confession and grand jury indictment.

For appellant Torres: David H. Perecman, Manhattan (212) 977-7033

For respondent City et al: Assistant Corporation Counsel Richard Dearing (212) 356-1000