

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, November 16, 2016

No. 201 Hain v Jamison

A newborn calf escaped from the Drumm Family Farm and wandered near or onto Curtis Coopers Road in Steuben County in November 2010. Holly Hain stopped her car and got out to move the calf away from the roadway. Seventeen-year-old Leah Jamison, driving at night, rounded a curve and struck Hain, killing her. The decedent's husband, Andrew Hain, brought this wrongful death action against Jamison and the car's owner, Angela Jamison; and against Drumm Farm, claiming the farm was negligent in allowing the calf to escape and failing to retrieve it after a neighbor told the farm's owner the calf was on the side of the road. The Jamisons cross-claimed against Drumm Farm for indemnification and contribution. Drumm Farm moved for summary judgment dismissing the complaint and cross-claims, arguing its alleged negligence was not a proximate cause of the accident, which was instead the result of the unforeseeable acts of Holly Hain walking on the road to help the calf and Leah Jamison driving negligently.

Supreme Court denied the motion. "[T]his court cannot say, as a matter of law, that [decedent's] conduct was extraordinary under the circumstances, that it was not foreseeable in the normal course of events, and was that far removed from the situation created by [Drumm Farm's] negligence. I don't believe that I can say that her actions were not foreseeable, that someone would not try to get the cow out of the road either because it was in their way, because it was in the way of another motorist, because it was injured...."

The Appellate Division, Fourth Department reversed on a 3-1 vote and dismissed all claims against Drumm Farm, saying it "established that any negligence on its part in allowing the calf to escape merely 'created the opportunity for [decedent] to be standing [in the roadway], [but] it did not cause [her] to stand' there.... 'In short, the [alleged] negligence of [Drumm Farm] merely furnished the occasion for an unrelated act to cause injuries not ordinarily anticipated'...." Because Hain did not contend or show "that the calf's presence in the road ... forced decedent to stop her vehicle," Drumm Farm established "that its 'alleged negligent act, at most, caused the [calf to wander] out of the field, which was not the immediate cause of the accident'...."

The dissenter said the farm failed to establish that "decedent's conduct was 'of such an extraordinary nature or so attenuate[d] [Drumm Farm's] negligence from the ultimate injury that responsibility for the injury may not be reasonably attributed to [Drumm Farm],' or that 'its alleged negligence did not place decedent in an unsafe position on the roadway by creating a hazard.... It is impossible to determine from the evidence in the record whether the calf was on the shoulder of the road or in the travel lane, and thus it is equally impossible to determine whether the calf's presence placed decedent in a position of danger. If the calf was in a position that forced decedent to stop her vehicle on the curve of a dark country road, she would have been in a 'position of peril' ... regardless of whether she remained in the vehicle."

For appellants Angela and Leah Jamison: James P. O'Brien, Binghamton (607) 723-9511

For respondent Andrew Hain: Ellen B. Sturm, Buffalo (716) 888-8888

For respondent Drumm Family Farm: Derek J. Roller, Buffalo (716) 852-2000

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No. 202 People v Anthony Perkins

(papers sealed)

Anthony Perkins was charged with committing a series of four gunpoint robberies in Ridgewood, Queens, in July 2007. In describing the robber to police, two of the victims -- Szczepan P. and Amit B. -- said he had dreadlocks or long hair. The other two -- Monika B. and Michelle H. -- did not mention his hair, although Monika B. testified at trial that the robber had dreadlocks. The four victims identified Perkins in a photo array in which all of the men pictured had dreadlocks. The police then placed Perkins and five fillers in a lineup in which Perkins was the only one with dreadlocks. All six men wore baseball caps, but Perkins' dreadlocks remained visible. All four victims identified Perkins as the man who robbed them. Perkins moved to suppress the lineup identifications as unduly suggestive.

A judicial hearing officer concluded the lineup identifications of Szczepan P. and Amit B., who had told police the robber had dreadlocks, should be suppressed because "the fact that the defendant was the only participant in the lineup with long dreadlocks, a distinctive physical feature, created the likelihood of misidentification." However, he said the lineup testimony of Monika B. and Michelle H., who had not mentioned dreadlocks in their initial descriptions, need not be suppressed because "it is not just the fact that a defendant has a distinctive feature or stands out in some way which renders a procedure suggestive. Rather, it is where such distinctive feature is an integral part of the description provided by the complainant that the suggestiveness arises. Therefore..., where [neither] of the ... witnesses described the perpetrator as having dreadlocks, the fact that the defendant had dreadlocks is of no legal significance."

Supreme Court adopted the JHO's report and denied the motion to suppress. The court also denied defense counsel's request for an adverse inference charge regarding tapes of 911 calls made by three of the victims. He had asked for the recordings, but they had been destroyed in accordance with Police Department policy and he was given summaries of the contents of the calls. Perkins was convicted of two counts of first-degree robbery and sentenced to consecutive terms of 20 years to life.

The Appellate Division, Second Department affirmed, ruling the lineup identifications of Monika B. and Michelle H. were properly admitted. "The defendant's dreadlock hairstyle was not part of the subject complainants' descriptions of the perpetrator..., was minimized by the fact that the participants all wore hats, and, under the circumstances of this case, did not render the lineup unduly suggestive..., " it said.

Perkins says, "The facts ... belie the court's reasoning," where "the police suggested to all four witnesses that the robber had dreadlocks because they showed all of them photo arrays of potential suspects in which *all of the photographs* prominently displayed dreadlocks" and where Monika B., who did not mention dreadlocks in her description, revealed at trial that she had seen them. "The unfair rule upon which the court purportedly relied -- i.e., that the same lineup is unconstitutional as to two witnesses but not as to two others *solely* because of the mere words uttered in their initial descriptions -- is a hyper-literal misinterpretation of this Court's precedent. In truth, the lineup ... was unduly suggestive as to *all of the* complainants because Appellant was the sole person having dreadlocks."

For appellant Perkins: Stephen P. Younger, Manhattan (212) 336-2131

For respondent: Queens Assistant District Attorney Nancy Fitzpatrick Talcott (718) 286-6696

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To be argued Wednesday, November 16, 2016

No. 204 People v Patrick Morgan

Patrick Morgan was tried on murder and manslaughter charges for the shooting death of Shawn Folkes in the Bronx in April 2008. On its second day of deliberations, the jury said in a note that it was deadlocked. Supreme Court sent the jurors home for the night and the next morning gave them a full Allen charge, instructing them to continue deliberations to reach a unanimous verdict. It said they should deliberate "with a view toward reaching an agreement if that can be done without surrendering individual judgment. Each of you must decide the case for yourself, but only after a fair and impartial consideration of the evidence with the other jurors. You should not surrender an honest view of the evidence simply because you want the trial to end or you are outvoted. At the same time, you should not hesitate to re-examine your views and change your mind if you become convinced that your position was not correct." Shortly after noon the jury announced it had reached a verdict, but when jurors were polled the vote was actually 10 to 2. The court denied a defense motion for a mistrial as premature and directed the jurors to resume deliberations, reminding them that their verdict must be unanimous.

The next morning, the jury requested readbacks of witness testimony and of defense counsel's summation. The court denied the request for the defense summation on the ground that it was not evidence. Defense counsel did not object. The jury reached a verdict that afternoon acquitting Morgan of murder and convicting him of first-degree manslaughter and second-degree weapon possession. Morgan was sentenced to 18 years in prison.

The Appellate Division, First Department affirmed on a 4-1 vote, rejecting Morgan's claim that the charge given after the jury poll revealed a 10-2 split was coercive. "[D]efendant was not deprived of due process by the absence from this instruction of language reminding the jurors not to surrender their conscientiously held beliefs. The court had so instructed the jury in a charge that was given, with defendant's consent, two hours earlier," it said, and the second charge "did not apply improper pressure on the two jurors who did not agree with the verdict." It said Morgan's claim that the trial court improperly denied the jury's request to re-hear the defense summation was "unpreserved and waived" and, in any event, there was no abuse of discretion.

The dissenter argued the second deadlock charge, delivered after jurors split 10-2 on a verdict, was "unduly coercive" because the trial court "directed the jury to resume deliberations in an effort to reach a unanimous verdict, without including cautionary language admonishing them to adhere to their conscientiously held views.... The minority jurors very well may have felt 'impermissibly singled out for noncompliance with the majority'...." Regarding the requested readback of the defense summation, she said jurors "may have perceived the court's denial of the request as a sign of judicial disapproval of the defense position."

For appellant Morgan: Susan H. Salomon, Manhattan (212) 577-2523

For respondent: Bronx Assistant District Attorney Catherine M. Reno (718) 838-7119

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No. 205 People v Prince Clark

In September 2008, Prince Clark was beaten by a group of men, including Jamal Wisdom and Gamard Talleyrand, a few blocks from his Brooklyn apartment building. A prosecution eyewitness saw Clark's eye bleed and heard him say, "They got a knife, they are going to cut me," but she did not see a knife. Clark and his cousin, Michael Morrison, retreated to their building pursued by the others, who beat Clark again. Clark and Morrison went into the building, then quickly returned to the street. Grainy surveillance video recorded a man in a white T-shirt, identified by the eyewitness as Clark, taking a handgun from a man she identified as Morrison and then walking down the street out of camera range. Seconds later Talleyrand was shot in the calf, then the man in the T-shirt reappeared on the videotape still holding the gun. Wisdom pursued him inside the building and they wrestled briefly in the lobby, until the man in the T-shirt broke free and fatally shot Wisdom. Talleyrand said he did not see who shot him and he could not identify the men on the videotape.

Clark asserted his innocence and insisted on pursuing a misidentification defense at trial. His attorney told Supreme Court that, while the evidence could support a justification defense, "I would need the defendant's permission to make such an argument" and Clark "said no way. I do not wish to have you indicate in any manner, shape or form as far as justification.... Without his permission I've told him I cannot do it." During deliberations, the jury sent a note asking, if Wisdom "initiated the struggle" and Clark "was acting defensively[,] does that negate intent to kill[?]" In response, after explaining intent, the court said, "You were not instructed on what's commonly called the law of self defense. What you were instructed on is the issue of intent.... That is ... what you have to focus on; whether or not the defendant intended to cause the death of Mr. Wisdom...." Clark was convicted of second-degree murder and assault and sentenced to an aggregate term of 25 years to life.

The Appellate Division, Second Department affirmed on a 3-2 vote, ruling Clark was not deprived of effective assistance of counsel by his attorney's failure to raise a justification defense. "[S]ince the defendant had the right to chart his own defense, and since he made a voluntary, knowing, and intelligent election to pursue a viable misidentification defense and to eschew reliance upon a justification argument, it was not the role of his counsel to override his wishes by championing an inconsistent defense." It said the trial court responded meaningfully to the jury's request for information about self-defense. Where "an instruction regarding such a defense is adamantly opposed by the defendant and his counsel, would logically conflict with the defendant's well-considered defense choice, and possesses only tenuous applicability to the facts....," it said, "the trial court is under no obligation to charge justification sua sponte...."

The dissenters argued Clark was deprived of effective assistance of counsel by his attorney's deference in rejecting a justification defense. "[T]he case law indicates that matters of strategy and tactics are ultimately left to the professional judgment of counsel. In this case..., defense counsel failed to exercise his own professional judgment due to his erroneous belief that he was prohibited from doing so." They also said the trial court failed to respond meaningfully to the jury's question about self defense on the murder count, where "there was a reasonable view of the evidence which would permit the jury to conclude that the defendant's conduct was justified."

For appellant Clark: De Nice Powell, Manhattan (212) 693-0085

For respondent: Brooklyn Assistant District Attorney Sholom J. Twersky (718) 250-2537

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No. 203 People v Brandon Warrington

Brandon Warrington was charged with fatally beating five-year-old Gary Carpenter, his girlfriend's son, who died of a traumatic brain injury caused by blunt force trauma inflicted at the couple's Glens Falls apartment in November 2012. The autopsy report and witness testimony provided evidence that Carpenter had suffered severe physical abuse prior to the fatal injury.

During jury selection, after defense counsel asked the prospective jurors if anyone felt they could not be fair, juror number 383 said, "It's a five year old [victim.] Adult [defendant]. I can't do it." Neither defense counsel nor County Court asked the juror any follow-up questions at that time. After defense counsel asked jurors if they agreed that the prosecutor bore the burden of proving guilt beyond a reasonable doubt, he asked juror 383 if she would "have a problem" finding Warrington not guilty if the prosecutor did not meet that burden. She replied, "I don't know." Later, the court asked juror 383 what her verdict would be if she was not convinced of Warrington's guilt beyond a reasonable doubt and she replied, "I would have to say not guilty, you know, if they can't do it to my satisfaction." After another, similar exchange, the court asked if she could follow the law regarding crediting witness testimony. Juror 383 said, "... I'll listen to what they have to say and then I'll draw my own conclusion." The court asked if she would "follow the law as I instruct at the end of the case," and she said, "Yes."

The court denied Warrington's motion to dismiss juror 383 for cause, and he used a peremptory challenge. Warrington was convicted of second-degree murder, manslaughter and endangering the welfare of a child. He was sentenced to 25 years to life in prison.

The Appellate Division, Third Department reversed on a 3-1 vote and remitted the case for a new trial, ruling juror 383 should have been dismissed for cause. The juror "unambiguously acknowledged a form of bias - based on the respective ages of the victim and defendant," but "she was never asked ... whether she could set aside any biases she held, generally, or whether she could set aside her specific bias...," it said. "Therefore, [the juror] did not unambiguously state that, despite preexisting opinions that might indicate bias, [she would] decide the case impartially and based on the evidence, because she never made any statement regarding her preexisting opinion, let alone an unambiguous statement that she could set such opinion aside...." The juror "never contradicted or retracted her statement that her bias related to the respective ages of defendant and the victim prevented her from being a fair and impartial juror...."

The dissenter said, "The record does not suggest that juror No. 383 harbored any specific animus toward defendant. It does demonstrate her fears that she could not be fair given the fact that horrible crimes were committed against a young victim, but most if not all jurors bring some predispositions, of varying intensity, when they enter the jury box." He said the juror "confirmed that a fair and impartial verdict of guilt could only flow from the People meeting their burden of proof, and provided unequivocal assurances that she would not have any problem in following the law and acquitting defendant if the People failed to meet that burden. County Court plainly credited those assurances despite the prior indications that she might not be able to do so. Thus..., I perceive no abuse of discretion in the denial of defendants challenge for cause...."

For appellant: Warren County District Attorney Kathleen B. Hogan (518) 761-6405
For respondent Warrington: Paul J. Connolly, Delmar (518) 439-7633