

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, November 17, 2016

No. 206 People v Steven Finkelstein

Steven Finkelstein was indicted on two felony counts of first-degree coercion, the first count alleging that he threatened a woman with physical harm and threatened to chase away the clients of her travel agency to prevent her from removing him from her Manhattan apartment during the summer of 2005. The second count alleged that he made similar threats to prevent her from disposing of his belongings after he was arrested for a parole violation in September 2005.

At trial, Finkelstein asked Supreme Court to submit to the jury misdemeanor counts of second-degree coercion as a lesser included offense of each count of first-degree coercion. The two crimes contain identical elements, requiring proof that the defendant compelled a person to engage in or abstain from legal conduct "by instilling in the victim a fear" that he will "cause physical injury to a person" or "cause damage to property." This Court said in People v Eboli (34 NY2d 281 [1974]) and People v Discala (45 NY2d 38 [1978]) that the "heinousness" of the conduct distinguishes first-degree coercion from the lesser charge.

Supreme Court denied the request because it found "this is not an extraordinary case" in which submission of second-degree coercion would be appropriate "and because of the impossibilities of following the remainder of the requirements set" by appellate courts that a trial judge must instruct "the jury that they must first acquit on the higher charge before they can consider the lesser included charge.... [I]nasmuch as the same elements must be found beyond a reasonable doubt for conviction of both charges, it is a logical impossibility for that to occur in this case. Finkelstein was convicted of both first-degree coercion counts and was sentenced to an aggregate term of 7 to 14 years in prison. The Appellate Division, First Department affirmed.

Finkelstein argues that his rights to trial by jury, equal protection and due process were violated "because coercion in the first degree has an implicit element of heinousness" that was "not submitted to the jury." He relies on Apprendi v New Jersey (530 US 466 [2000]), which held, "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." Finkelstein says, "The jury in this case ... was not permitted to determine whether this heinous quality was present. Instead, it was the prosecution that made this determination" by charging him with only first-degree coercion. He also argues that, because "there was a reasonable view of the evidence that heinousness was lacking in this case, the defense was entitled to have the jury charged on coercion in the second degree as a lesser included offense," and the trial court's refusal "resulted in a necessary factual determination being improperly taken from the jury."

For appellant Finkelstein: Sara Gurwitch, Manhattan (212) 402-4100

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

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No. 207 People v Joseph Bridgeforth

(papers sealed)

Joseph Bridgeforth and a codefendant were charged with robbing a man in Queens in October 2011. The codefendant allegedly held a knife. During jury selection, Bridgeforth's attorney raised a Batson challenge after the prosecutor used peremptory strikes to remove five "black or dark-colored" women from the jury pool. Four of those prospective jurors were African-American and the fifth said she was born in India. The prosecutor agreed that African-Americans are a cognizable group under Batson, but said "we ... can't do black or skin color, Judge." He offered race-neutral reasons for striking the four African-American women. Supreme Court accepted three of the reasons, but rejected the fourth and seated that juror. The prosecutor said he could not remember why he struck the Indian juror and never gave a reason for her. The court did not pursue the matter, allowed the peremptory challenge to stand, and the Indian woman was not seated on the jury. Bridgeforth was convicted of robbery in the first and second degrees and was sentenced to five years in prison.

The Appellate Division, Second Department affirmed. It said Bridgeforth argued in his Batson motion "that the prosecutor used peremptory challenges to strike all the black ... or 'dark-colored' prospective female jurors, including an Indian woman. Under the circumstances of this case, the defendant did not meet his prima facie burden of establishing that the prosecutor exercised a peremptory challenge to remove that prospective juror on the basis of her membership in a constitutionally cognizable class protected under the Equal Protection Clause of the United States and New York Constitutions...."

Bridgeforth argues that people with dark-colored skin are a cognizable class under Batson and that the Indian woman should have been seated on the jury because the prosecutor never provided a non-discriminatory reason for striking her. "[S]kin color is expressly enumerated as a cognizable class in New York for the purpose of ensuring the equal protection to which both litigants and prospective jurors are entitled," he says, citing the prohibition of discrimination "because of race, color, creed or religion" in the New York Constitution's Bill of Rights. "In addition, the recognition that those with dark skin constitute a cognizable group is consistent with decisional law of the Supreme Court, which has often referred to color prejudice in its condemnation of racially motivated peremptory strikes...."

The prosecution argues the prosecutor was not required to give a reason for striking the Indian juror because Bridgeforth did not establish that she was in the same protected class as the African-American jurors. "Defendant has not shown that women with 'dark' skin tones with their varying ancestries, religions, cultures, and histories form a single distinct group, or that they all suffered the same tragic history of discrimination ... that African-Americans suffered."

For appellant Bridgeforth: Tammy E. Linn, Manhattan (212) 693-0085

For respondent: Queens Assistant District Attorney Merri Turk Lasky (718) 286-5856

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No. 208 People v James Miller

William Richardson was shot to death in the Bronx in June 2007 and 15 days later police in Charlotte, North Carolina arrested James Miller at the request of New York detectives, who went to Charlotte to question him. Miller waived his Miranda rights and made oral and written statements, saying that Richardson had tried to kill him two years earlier and that, on the day of the shooting, Richardson approached him enraged and screaming with an ice pick in his hand. When Richardson grabbed him, Miller said he pulled out his gun to defend himself and Richardson tried to run. Miller said he emptied his gun at the fleeing Richardson, who was hit five times. Miller then gave the detectives a videotaped statement to the same effect.

During jury selection, defense counsel sought to ask potential jurors if they would be able to follow the law and disregard a confession if they found it was involuntary. Supreme Court denied the request as "premature," relying in part on the prosecutor's statement that "I am not definite that we are going to introduce the statement." Defense counsel said he wanted to avoid jurors "who will never accept" that an involuntary confession may not be considered for any purpose, who would say "if he confessed or ... said he did it, that's the end of the story for me." The court said it was unclear what, if anything, might be made of the statements at trial. "Also, the People may not introduce the statements and now you're running the risk that [jurors] could speculate" about why they weren't presented, the court said. "Are the People withholding [evidence] because it's exculpatory? Is the defense withholding it because it's inculpatory? I think it raises issues that should not be raised with the jury at this stage."

The statements were presented to the jury. Miller testified they were coerced and untrue. He said he denied shooting Richardson and requested an attorney several times during the questioning, and he was not read his Miranda rights until after the last statement. He testified the detectives slapped him and threatened to arrest his aunt and girlfriend and to lock him up for life if he did not cooperate, all of which the detectives denied. Miller was acquitted of second-degree murder, but convicted of first-degree manslaughter and sentenced to 25 years in prison.

The Appellate Division, First Department affirmed, saying the trial court "properly exercised its discretion ... in precluding defendant from questioning prospective jurors" about confessions. "The People had not yet decided whether they would introduce defendant's statements, which could be viewed as inculpatory or exculpatory, depending on defendant's choice of defenses. Thus, if the statements ultimately were not admitted, questioning the jurors regarding their ability to disregard an involuntary confession would invite the jurors to speculate as to the content of the statements and why they had not been introduced...."

Miller argues, "By prohibiting Mr. Miller from identifying and removing jurors incapable of evaluating the voluntariness of his confession, the trial court denied [him] his constitutional right to a fair trial. Moreover, the trial court did so based on the prosecution's stated lack of certainty about whether it would use" the statements, thereby "affording the prosecution the authority to unilaterally limit the scope of voir dire." He says the First Department's decision conflicts with the Second Department's ruling in People v De Francesco (88 AD2d 920 [1982]).

For appellant Miller: Daniella P. Main, Manhattan (212) 402-4100

For respondent: Bronx Assistant District Attorney Lori Ann Farrington (718) 838-6223

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No. 209 People v Cristian Morales

Cristian Morales, a native of Honduras, was convicted of misdemeanor driving while intoxicated and related traffic charges in Nassau County District Court on October 13, 2011. His attorney filed a notice of appeal one week later. On November 18, 2011, Morales was deported to Honduras, not based on his DWI conviction, but for being illegally in the United States after having been previously deported in 2005. His whereabouts were unknown and he did not speak with his appellate counsel for the next four years. He has been in communication with counsel by email and telephone since December 2015. Eight months earlier, in April 2015, appellate counsel filed a brief on Morales' behalf with the Appellate Term. The Nassau County District Attorney moved to dismiss the appeal.

The Appellate Term for the 9th and 10th Judicial Districts granted the motion to dismiss "on the grounds, among others, that appellant has been deported and is no longer available to obey the mandate of the court ... and that appellant has failed to have any contact with appellate counsel." It dismissed the appeal "without prejudice to appellant moving to reinstate the appeal should he return to this court's jurisdiction."

Morales argues that his appeal should be reinstated under People v Ventura (17 NY3d 675 [2011]), which held that defendants who have been involuntarily deported have "an absolute right to seek appellate review of their convictions" under CPL 450.10; and People v Harrison (27 NY3d 281 [2016]), which said Ventura "did not depend upon any causal relationship between the defendant's conviction and deportation" and was not limited to appeals seeking outright dismissal of charges, but also applies to appeals that could result in remittal for further proceedings. He says the cases make clear "that deported defendants have a fundamental right to intermediate appellate review" regardless of the basis for their deportation, the issues they raise on appeal, or whether that remained in communication with their appellate counsel.

The prosecution, observing that the defendants in Ventura and Harrison had perfected their appeals before they were deported, argues that Morales' "disappearance and lack of communication with his attorney constituted, at the very least, a 'failure of action' by defendant to prosecute and perfect -- indeed, were an abandonment of -- his appeal.... Although defendant's deportation was involuntary, his decision to avoid contact with his appellate attorney was not."

For appellant Morales: Dori Cohen, Hempstead (516) 560-6400 ext. 06422

For respondent: Nassau County Assistant District Attorney Adam S. Charnoff (516) 571-3800