

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 or gspencer@nycourts.gov.

To be argued Wednesday, February 15, 2017

No. 30 People v William Cook

(papers sealed)

No. 31 People v William Cook

(papers sealed)

William Cook pled guilty to multiple sexual offenses committed against four children, ranging from 7 to 12 years of age, in Queens and Staten Island in 1998 and 1999. All of them were the children of Cook's own childhood friends. Three of the victims were siblings and one was Cook's godson. The district attorneys for Queens and Richmond Counties coordinated their prosecutions and reached a plea agreement covering all of the charged offenses, under which Cook was sentenced to concurrent terms of up to 15 years in each county. He served 12 years in prison. Prior to his release in 2012, pursuant to the Sex Offender Registration Act (SORA), the Board of Examiners of Sex Offenders prepared a case summary and risk assessment instrument that covered all of Cook's convictions in both counties. The Board did not assess any points under risk factor 7, which applies when the victim is a stranger or "a person with whom a relationship had been established or promoted for the primary purpose of victimization."

At a SORA hearing in Richmond County, the prosecutor asked Supreme Court to assess Cook 20 points under factor 7, relying on Cook's descriptions in his Relapse Prevention Plan of how he "groomed the victims" for sexual abuse by playing with them, buying them gifts and taking them places. Cook argued the assessment would be improper because he had a well established, "family-like" relationship with the victims and their families long before any abuse occurred. The court assessed him 20 points under factor 7 and designated him a level three (high risk) offender, saying, "While the relationship may have started in a family sense, it's clear that the defendant brought that relationship to another level in order to accomplish his goals with each of these children."

When Supreme Court in Queens County notified Cook that it would also hold a SORA hearing, he moved to dismiss the proceeding as unauthorized by SORA and barred by res judicata. The court denied his motion and designated him a level three sex offender.

The Appellate Division, Second Department affirmed the Richmond County order, saying he was properly assessed "20 points under risk factor 7 since the defendant's self-authored 'Relapse Prevention Plan' described how the defendant groomed his victims, at least three of whom he knew through his longstanding friendship with their parents, for the primary purpose of victimizing them..." In a separate ruling, it reversed the Queens County order and dismissed the second proceeding. Under the SORA statute, it said, "only one SORA 'disposition' may be made per 'Current Offense,' or group of 'Current Offenses.'" It said the Queens proceeding was also barred by res judicata because "the crimes and the evidence ... were identical to those that were before the Richmond County SORA court, as were the parties and the issues to be determined."

Cook argues he should not be assessed points under factor 7 because he was not a "stranger" to the victims. "[H]e had been friends with their parents since childhood -- over two decades -- and knew their aunts, uncles, and grandparents well. His ties to the complainants existed long before he engaged in any sexual conduct with them. He was no different from the uncle who abuses his niece, a relationship that the Guidelines explicitly state is not covered by this risk factor." The Queens district attorney argues the Queens SORA proceeding was improperly dismissed because the statute requires "the sentencing court" in each case to determine the offender's risk level, a requirement that "cannot be circumscribed by applying a res judicata effect to the ruling of a single 'sentencing court.'"

For appellant in No. 30: Queens Assistant District Attorney Edward D. Saslaw (718) 286-5803

For respondent in No. 31: Staten Island Asst. Dist. Attorney Morrie I. Kleinbart (718) 556-7010

For appellant/respondent Cook: Lisa Napoli, Manhattan (212) 693-0085 ext. 202

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No. 32 People v Yusuf Sparks

(papers sealed)

Yusuf Sparks was smoking a cigarette in front of a Manhattan convenience store in December 2012 when Reginald Randolph, who appeared to be highly intoxicated, approached him and said, "I'm gonna fuck you up, I'm gonna fuck you up too." Both men entered the store and continued to exchange words. Sparks told Randolph to "take your hands off me" and punched him, then left the store. When Sparks returned a few minutes later, Randolph was standing nearby. Sparks took an empty milk crate out of the store and hit Randolph in the face with it. Two police officers, who were stopped at a traffic light near the store, arrested Sparks at the scene. Indicted on a charge of first-degree assault, he raised a justification defense at trial.

At a Sandoval hearing, the prosecutor sought permission, if Sparks chose to testify, to cross-examine him about his 2011 conviction for attempted second-degree robbery, in which he had tried to steal a cell phone by pretending to have a gun. Supreme Court ruled the prosecutor could elicit that Sparks had been convicted of a felony, but not ask about the underlying facts. However, it warned that it might reconsider its ruling if he testified that Randolph tried to rob him, saying details of the 2011 conviction would then be relevant because "that is exactly what the defendant has done on numerous occasions in the past." Sparks testified that Randolph had a reputation for violence and was the initial aggressor, that Randolph "insinuated that he had a gun" and tried to steal his coat inside the store, and that he feared Randolph was waiting to attack him again when he hit Randolph with the milk crate. The court then allowed the prosecutor to question Sparks about the details of his prior conviction. When the case was submitted to the jury, the court refused to instruct it on the defense of justification. Sparks was convicted of second-degree assault and sentenced to seven years in prison.

The Appellate Division, First Department affirmed. It said the justification charge was properly denied "since there was no reasonable view of the evidence, viewed in the light most favorable to defendant, to support that charge.... Even under the version of the events contained in defendant's testimony, any conduct by the victim that might have been a basis for a justification defense had abated by the time defendant committed the assault." It said the trial court properly "modified" its Sandoval ruling based on Sparks' testimony, when "it became clear that there was a suspicious similarity, probative under the circumstances of the case, between the facts of defendant's own prior crime, and the conduct he was now attributing to the victim."

Sparks argues that, "in erroneously deciding that there was no reasonable view of the evidence to support justification, the court failed to consider the evidence in a light most favorable to Mr. Sparks and effectively usurped the jury's fact finding function.... [A] trial court is obligated to give a defendant the benefit of the doubt when considering whether a justification charge is warranted, and it cannot take the question out of the jury's hands simply because it is dubious of the defense." He also argues the trial court deprived him of a fair trial "by erroneously finding that the details of his 2011 ... conviction were probative of his justification defense and then refusing to charge the jury with justification."

For appellant Sparks: Andrew J. Dalack, Manhattan (212) 577-2523 ext. 539

For respondent: Manhattan Assistant District Attorney Susan Gliner (212) 335-9000

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No. 33 People v Carlos Valentin

Carlos Valentin got into an argument with Justin McWillis and Edward Hogan in a Bronx bodega in January 2009. McWillis grabbed a mop handle and followed the others outside, where they continued to argue. McWillis dropped the mop handle, and Valentin and Hogan began to walk away. Hogan turned and saw McWillis pick up the mop handle and walk after Valentin. He said McWillis swung the mop handle at Valentin while Valentin reached into his jacket for a gun. Valentin fired at close range, killing McWillis. Charged with murder and related offenses, he contended at trial that he acted in self defense.

Hogan gave inconsistent testimony about whether Valentin pulled out his gun after McWillis swung the mop handle at him, at about the same time, or before the swing. Hogan acknowledged that, 10 days after the shooting, he told investigators that Valentin did not fire any shots until after McWillis hit him from behind. Supreme Court charged the jury on the justification defense and included instruction on the initial aggressor exception, explaining that the shooting would not be justified if jurors found Valentin was "the person who first attacks or threatens to attack." Valentin was acquitted of murder, but convicted of first-degree manslaughter and sentenced to 20 years in prison.

The Appellate Division, First Department reversed in a 4-1 decision, saying the initial aggressor concept "was completely inapplicable to the facts of the case. Although the jury could have reasonably determined that defendant's use of deadly force was unjustified (where defendant used a gun against the deceased, who wielded a mop handle), it could not have reasonably found that defendant was the initial aggressor.... [U]nder no iteration of Hogan's description of the events can it be concluded that defendant withdrew the gun before the deceased swung the mop handle. At most, it can be said that defendant withdrew the gun simultaneously with the deceased's attack." Finding the error was not harmless, the court said, "Contrary to the dissent, a mop handle swung at a person's head may constitute 'deadly physical force,' defined as 'physical force which ... is readily capable of causing death or other serious physical injury'...."

The dissenter said, "There was, in fact, evidence that it was defendant who was the first to use or threaten the imminent use of deadly force. For example, Hogan's admittedly inconsistent testimony included assertions that would have permitted the jury to find that when McWillis followed after defendant as he was walking away from the bodega, he held the mop handle but did not use or threaten to use it until defendant drew his gun." He also argued that any error was harmless. "Even assuming that the use of a mop handle could conceivably cause death or serious physical injury, the manner in which McWillis wielded the mop handle, by swinging it, does not qualify as creating a threat of deadly physical force" and Valentin could not "have reasonably believed that he was in deadly peril from McWillis at the time he shot him."

For appellant: Bronx Special Assistant District Attorney Virginia A. Marciano (914) 995-4457
For respondent Valentin: Robert S. Dean, Manhattan (212) 577-2523