

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, September 13, 2017

No. 102 Matter of State of New York v Floyd Y.

(papers sealed)

Floyd Y. was convicted in 2001 of first-degree sexual abuse and endangering the welfare of a child for molesting two children between 1996 and 1998. He was sentenced to four to eight years in prison. In 2007, after his sentence expired, the State filed a civil management petition under Mental Hygiene Law article 10, alleging that he is a dangerous sex offender who should be confined in a secure treatment facility. The statute requires the State to prove by clear and convincing evidence that an offender suffers from a "mental abnormality," which it defines as "a congenital or acquired condition, disease or disorder that affects the emotional, cognitive, or volitional capacity of a person in a manner that predisposes him or her to the commission of conduct constituting a sex offense and that results in that person having serious difficulty in controlling such conduct." A jury found that Floyd suffered from a mental abnormality under Mental Hygiene Law § 10.03, but the verdict was reversed in M/O State v Floyd (22 NY3d 95 [2013]). At his second trial, the jury again found he suffered from a mental abnormality.

Supreme Court granted Floyd's motion to set aside the verdict, finding the State presented insufficient evidence that he had "serious difficulty" controlling his sexual misconduct. The court cited M/O State of New York v Donald DD. [Kenneth T.] (24 NY3d 174 [2014]), which it said "significantly increased the quantum of evidence the State must present to demonstrate that [an offender] has a serious difficulty controlling his sex offending behavior." It noted that the State's expert in this case and in Kenneth T. relied on the offender's lack of progress in sex offender treatment, admission that he had serious difficulty controlling his sexual urges, and lengthy history of sexual misconduct despite prior arrests and imprisonment in concluding that he suffered from a mental abnormality. After a subsequent hearing, the court determined that Floyd was not a dangerous sex offender requiring confinement.

The Appellate Division, First Department reversed both orders and reinstated the jury's verdict that Floyd had a mental abnormality. It said the State's expert here, in contrast to Kenneth T., "did not solely rely on the facts of [Floyd's] sex offenses in concluding that he had serious difficulty controlling his urges. Instead, [the expert] based his opinion on [Floyd's] triple diagnosis (pedophilia, [antisocial personality] and substance abuse disorders), his pattern of sexual misconduct, and his abject failure to satisfactorily progress in treatment." It said another important distinction was that "the underlying sexual disorder in Kenneth T. was paraphilia NOS, not pedophilia," which, "by definition, involves an element of difficulty in control.... By this decision, we do not hold that all offenders who suffer from pedophilia are automatically, by virtue of that diagnosis alone, subject to mandatory civil management. We simply hold that the State's evidence in this case -- including [Floyd's] multiple diagnoses, his history of sexual misconduct, his admitted inability to control his pedophilic urges, his lack of satisfactory progress in sex offender treatment and his failure to have a viable relapse prevention plan -- was legally sufficient to uphold" the jury's verdict.

For appellant Floyd Y.: Alexandra Keeling, Manhattan (646) 386-5891

For respondent State: Assistant Solicitor General Matthew W. Grieco (212) 416-8014

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To be argued Wednesday, September 13, 2017

No. 82 People v Sean Garvin

(papers sealed)

Detectives investigating a series of Queens bank robberies in January 2011 found Sean Garvin's fingerprint on a note the masked robber left at one of the banks. Without obtaining an arrest warrant, detectives went to his home in a two-family house and entered the front door. They walked through a vestibule and up a staircase leading to his apartment on the top floor. A detective knocked on his door and, when Garvin opened it, told him he was under arrest. Garvin turned around, put his hands behind his back, and was handcuffed as he stood in the doorway. The detectives found \$542 in his pocket when they searched him at the precinct. In oral and written statements, he admitted that he robbed four banks and unsuccessfully attempted to rob a Bank of America branch. Later, in a holding cell, he said, "I should have stuck to Chase banks. They're the ones that give the money out."

Garvin moved to suppress his statements and other evidence obtained as a result of his warrantless arrest, arguing the detectives had illegally entered his residence without his consent. Supreme Court denied the motion. Convicted at a bench trial of four counts of third-degree robbery and one of attempted robbery, he was sentenced to 15 years to life in prison.

The Appellate Division, Second Department affirmed in a 3-1 decision, finding the warrantless arrest did not violate his rights under Payton v New York (445 US 573) because the detectives did not enter his home. "[W]here the defendant lived in the upstairs apartment of a building containing two separate apartments, there is clearly a 'distinction between homes and common areas such as halls and lobbies ... which are not within an individual tenant's zone of privacy'...", it said. "The arresting officer did not go inside the defendant's apartment ... or reach in to pull the defendant out.... Since the defendant was arrested at the threshold of his apartment, after he 'voluntarily emerged [and thereby] surrendered the enhanced constitutional protection of the home'...", the arrest was legal. It also said the trial court did not abuse its discretion in sentencing him as a persistent felony offender. "The court's conclusion that the nature of the defendant's criminal conduct, his history, and his character warranted extended incarceration and lifetime supervision is supported by the record...."

The dissenter said Garvin's motion to suppress the evidence should have been granted. "At the suppression hearing, the People failed to present sufficient evidence to show, in the first instance, that the police entry into the building where the defendant lived was lawful. There was no evidence presented as to how the police officers entered the building [and] no testimony that the police officers believed the building to be a two-family house prior to entering it. Furthermore, there was no evidence that the subject building was in any way distinguishable from a one-family house. Based on my reading of the hearing testimony, it can reasonably be inferred that the subject police officer testified that the building ... was a 'two-family house' based on his observations from inside the building, not from its outward appearance."

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

For respondent: Queens Assistant District Attorney Danielle S. Fenn (718) 286-5838

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To be argued Wednesday, September 13, 2017

No. 83 People v Phillip Wright

In January 2009 two men, one of them armed with a gun, abducted Giles Manley from a street in Brooklyn and drove him away in a car. The next day, after a series of calls demanding ransom were made from Manley's cell phone to his friends and family, the police tracked his phone to a car in which Phillip Wright and his co-defendant were sitting. Officers recovered a loaded handgun from Wright and found the injured victim, bound and gagged with duct tape, in the trunk of the car.

At their joint trial, defense attorneys asked prospective jurors if anyone thought police officers "have a duty not to lie?" One juror replied, "I feel like we are all humans. We do make mistakes to a certain extent. And I am not saying police officers don't lie, or anything like that. But they are humans, too.... [A]t the same time, they are officers. Their job is to protect. To do the right.... So I do give them the benefit of the doubt to do the right." She said she would not "automatically" believe police testimony, but agreed she would "lean towards it." Supreme Court denied -- without further inquiry -- Wright's challenge to strike the juror for cause, so he used a peremptory challenge to remove her.

The jury acquitted Wright of kidnapping and assault, but convicted him of second-degree criminal possession of a weapon. The court sentenced him to 15 years to life as a persistent felony offender under Penal Law § 70.10 and CPL 400.20, which permit enhanced sentences for defendants with two or more prior felony convictions if the judge finds by a preponderance of the evidence that "the history and character of the defendant and the nature and circumstances of his criminal conduct indicate that extended incarceration and life-time supervision will best serve the public interest." Wright argued on appeal that the juror should have been removed for cause and that his sentencing violated the 2000 Supreme Court ruling in Apprendi v New Jersey (530 US 466), which said, "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."

The Appellate Division, Second Department affirmed, saying the juror's statements "did not rise to the level of actual bias or otherwise indicate that [she] would be unable to render an impartial verdict.... Thus, there was no basis for the Supreme Court to administer an expurgatory oath or sustain the defendant's challenge for cause...." It rejected Wright's claim that the persistent felony offender statutes are unconstitutional based on precedents of this Court, which said they do not conflict with Apprendi because "defendants are eligible" for enhanced sentencing "based solely on whether they had two prior felony convictions." The Appellate Division said the statutes were not unconstitutional as applied to Wright because the trial court based its sentencing decision "solely on his prior convictions, facts found by the jury in the instant case, and [its] discretionary evaluation of the seriousness of [his] criminal history...."

Wright says the trial court erred in denying his for-cause challenge to a juror "who admitted she would give the 'benefit of the doubt' to police officers and 'lean towards' believing them," without obtaining an "unequivocal assurance that she could set aside her bias." He says recent Supreme Court rulings "make clear" that the persistent felony offender statutes are unconstitutional under Apprendi because their "plain language, history, and purpose all show that the sentencing court must make factual findings about a defendant's background and criminal conduct" and they "authorize the court to make findings about the quantity and quality of a defendant's prior convictions that far exceed the mere 'fact' of their existence...."

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