

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 Thursday, February 8, 2018 (arguments begin at noon)

No. 26 E.J. Brooks Company, d/b/a TydenBrooks v Cambridge Security Seals

E.J. Brooks Company, doing business as TydenBrooks, is the nation's largest manufacturer of plastic security seals, which are used to detect tampering with containers ranging from mail bags to chemical drums to first aid kits and other medical supplies. Cambridge Security Seals (CSS) was founded in 2010 and began manufacturing plastic security seals in competition with TydenBrooks at the end of 2011. In 2012, TydenBrooks brought this federal action for misappropriation of trade secrets, unfair competition, and unjust enrichment against CSS and three former TydenBrooks employees who went to work for CSS, alleging that CSS copied its automated process for manufacturing the security seals. As for damages, TydenBrooks pursued an "avoided costs" theory in which damages would be measured by the total costs CSS avoided by copying TydenBrooks's manufacturing process instead of developing its own.

U.S. District Court instructed the jury that damages could be based on CSS's avoided costs and explained the jury would have to compare CSS's actual costs in setting up its production lines "with the costs it would have incurred to produce the same products without the use and knowledge of [TydenBrooks's] manufacturing process." It told the jury to consider whether CSS "realized savings in research and development costs," whether CSS "gained a competitive advantage" by being able to bring its security seals to market earlier, and whether it realized any savings in operating costs due to the efficiencies of TydenBrooks's design.

The jury found in favor of TydenBrooks and awarded it \$3.9 million on its trade secrets, unfair competition, and unjust enrichment claims. TydenBrooks then moved to amend the judgment to include prejudgment interest at 9% per year from February 2011, a total of nearly \$1.5 million. District Court denied the motion, saying it instructed the jury to assess damages "from the date of the misappropriation ... through the date on which the verdict is given," which would make prejudgment interest for the same period "a windfall double recovery."

The U.S. Court of Appeals for the Second Circuit, regarding CSS's appeal, said there is no New York precedent that makes clear whether damages in a trade secret case may be based on avoided costs, or whether damages must "bear some connection to the plaintiff's losses." Regarding TydenBrooks's appeal of the denial of prejudgment interest, it said CPLR § 5001(a) "uses language suggesting that prejudgment interest is mandatory in cases involving misappropriated property." However, it said, "In a case in which the damages awarded are not clearly compensatory..., we find it hard to square the mandatory language of section 5001 with the import of the New York decisions ... that suggest that prejudgment interest under the statute is not mandatory where a windfall is the likely result." It is asking this Court to resolve both issues in a pair of certified questions: "1. Whether, under New York law, a plaintiff asserting claims of misappropriation of a trade secret, unfair competition, and unjust enrichment can recover damages that are measured by the costs the defendant avoided due to its unlawful activity. 2. If the answer ... is 'yes,' whether prejudgment interest under [CPLR] § 5001(a) is mandatory where a plaintiff recovers damages as measured by the defendant's avoided costs."

For appellant-respondent TydenBrooks: Daniel B. Goldman, Manhattan (212) 715-9100

For respondent-appellant CSS (Cambridge): Howard W. Schub, Manhattan (212) 506-1700

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No. 27 People v Raymond Crespo

Raymond Crespo was arrested in January 2013 after he allegedly stabbed a man during a street fight in East Harlem in January 2013. Prior to the start of jury selection for his trial, Crespo's attorney moved to withdraw, telling Supreme Court that Crespo would no longer speak with him. The court denied the motion. During jury selection, Crespo told the court that he did not want his appointed lawyer to represent him and that he wanted to defend himself. The court denied his request, saying it was "too late to make that request." A short time later, Crespo again told the court that he wanted to represent himself, and the court again denied the request as untimely. Crespo was convicted of first-degree assault and weapon possession, and was sentenced to 20 years to life in prison.

The Appellate Division, First Department reversed and remanded for a new trial, ruling the trial court violated Crespo's right to self-representation. "Contrary to the trial court's finding, defendant's requests to proceed pro se, made during jury selection, were timely asserted" because they were made before the prosecution's opening statement, it said, citing People v McIntyre (36 NY2d 10 [1974]). "We reject the People's argument that the request to proceed pro se must be made before jury selection...."

The prosecution says McIntyre held only that requests to proceed pro se "are timely if they are made 'before the trial commences.'" The trial in McIntyre was held under the former Code of Criminal Procedure, which provided that a trial commenced with the prosecution's opening statement. The prosecution argues that the adoption of the Criminal Procedure Law to replace the Criminal Code in 1971 changed the meaning of the term 'trial' to include jury selection, and thus a request to proceed pro se must be made prior to jury selection in order to be timely.

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For respondent Crespo: Ben A. Schatz, Manhattan (212) 577-2523 ext. 544

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To be argued Thursday, February 8, 2018 (arguments begin at noon)

No. 28 People v Spence Silburn

(papers sealed)

Police officers arrested Spence Silburn in Brooklyn in August 2011 when they saw him driving a car that had been stolen at gunpoint the day before. They found a loaded pistol in his jacket and took him to their precinct, where he waived his Miranda rights and admitted he had stolen the car. He also said he planned to shoot "some guys" who had shot at him days earlier. He became increasingly agitated, calling himself "a killer" and threatening to kill a detective, and finally he was taken to a hospital for a mental exam. A psychiatrist diagnosed him as having bipolar disorder with psychotic features and delusions.

At two pre-trial appearances, Silburn asked to proceed pro se with standby counsel, saying he wanted to question witnesses himself with the assistance of an attorney, "someone who acts like an aide." Supreme Court denied the request, saying, "[Y]ou have a right to represent yourself without an attorney. Or you have the right to have an attorney.... [Y]ou can't have dual representation." During the trial, Silburn's appointed counsel learned of the mental examination conducted on the day of his arrest and sought to introduce the psychiatrist's testimony or medical records reflecting the diagnosis of bipolar disorder. Defense counsel said he would use the evidence only to challenge the voluntariness of Silburn's Miranda waiver and confession. The court precluded the evidence for failure to comply with CPL 250.10. The statute requires a defendant to give prosecutors pre-trial notice of his intention to present "psychiatric evidence," which it defines as evidence "of mental disease or defect ... to be offered in connection with" affirmative defenses of insanity, extreme emotional disturbance, or "any other defense." Silburn was convicted of third-degree criminal possession of a weapon and unlicensed operation of a vehicle. He was sentenced to 12 years in prison.

The Appellate Division, Second Department affirmed, finding his request to represent himself was equivocal. "A 'defendant's request to proceed pro se must be based on a knowing, voluntary, and intelligent waiver of the right to counsel'.... Here, the Supreme Court did not violate the defendant's right to self-representation, since the defendant made no such waiver.... [H]e never asserted a desire to proceed pro se at trial, but only asked to 'go pro se with standby counsel,' a request that was properly denied...." It said the court did not err in precluding his psychiatric history, "as the defendant did not provide actual, timely notice of his intent to present psychiatric evidence" under CPL 250.10. "In any event..., the proffered psychiatric evidence would not have established that [he] had been unable to knowingly and voluntarily waive his right against self-incrimination at the time of his apprehension."

Silburn says his request for standby counsel did not render his request to proceed pro se equivocal, but instead "reflected a recognition that he could benefit from an attorney's technical assistance" and procedural advice. "It did not establish that he wished to share control of the case and essential strategic choices with an attorney." He says the trial court violated his right to self-representation by summarily denying his request without "any inquiry as to whether he still wished to represent himself if he could not have standby counsel." He says his psychiatric history was improperly precluded because the notice requirement of CPL 250.10 "applies only when psychiatric evidence is offered to support a defense to the charged crime," not when its "sole purpose" is to support his claim that his Miranda waiver was unknowing and involuntary. He also claims the court abused its discretion in refusing to accept late notice where "the People had knowledge of [his] mental health issues almost immediately after the crime and had themselves generated the psychiatric evidence in issue."

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