# 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, September 10, 2020 (arguments begin at noon)

**No. 44 Lynch v City of New York**

The Patrolmen's Benevolent Association of the City of New York (PBA) and its president, Patrick Lynch, brought this suit against New York City and its Police Pension Fund (PPF) to require them to allow police officers in tier 3 of the retirement system to obtain service credit for child care leave. The City and PPF maintained that only members of earlier tiers – officers hired before July 2009 – were eligible for the credit. The credit was created in 2000 by enactment of Administrative Code § 13-218(h), which provides that "any member [of PPF] who is absent without pay for child care" leave "shall be eligible" to purchase up to one year of pension credit for such leave. It also states, "In the event there is a conflict between the provisions of this subdivision and the provisions of any other law or code to the contrary, the provisions of this subdivision shall govern." The City argued that the pension benefits of tier 3 police officers are governed exclusively by article 14 of the Retirement and Social Security Law (RSSL), which does not contain a child care service credit. Article 14 also states, "In the event that there is a conflict between the provisions of this article and the provisions of any other law or code to the contrary, the provisions of this article shall govern" (RSSL § 500 [a]).

Supreme Court granted the PBA's motion for summary judgment, saying Administrative Code § 13-218(h) "plainly and unambiguously states that it applies to 'any member,' and ... does not limit its application to tier 2 police officers only." The "legislative history supports the plain statutory text, that the legislature intended the child care benefit to apply to all members of the PPF." Rejecting the City's argument that benefits for tier 3 officers are governed solely by article 14 of the RSSL, the court said "both articles 11 and 14, and the general laws setting forth the benefits for tiers 2 and 3, respectively, were enacted years before Administrative Code § 13-218(h), which also states that '[i]n the event there is a conflict between the provisions of this subdivision and the provisions of any other law or code to the contrary, the provisions of this subdivision shall govern'.... Further, defendants fail to explain why article 14 should not be read in conjunction with [section] 13-218(h), when article 11 is read in conjunction therewith, and affords the [child care benefit] to tier 2 police officers."

The Appellate Division, First Department reversed and dismissed the complaint, finding that tier 3 officers are not eligible for the credit. "While on its face [Administrative Code § 13-218(h)] does not distinguish between tiers of membership, upon review of the broader statutory scheme ... and legislative history, we conclude that tier 3 police officers are not entitled to service credit for unpaid child care leave," it said, noting that when the section was enacted "there were no police officers in tier 3." It said tier 3 officers' pension benefits are governed by article 14 of the RSSL, which does not provide a child care credit, and by title 13 of the Administrative Code, which "affords the credit to 'any member' of the PPF. "In the face of this conflict between the two, article 14 governs" based on its clause stating that its provisions "shall govern" over any conflicting law or code.

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To be argued Thursday, September 10, 2020 (arguments begin at noon)

**No. 62 People v Reginald Goldman**

In January 2012, Reginald Goldman was being held at Rikers Island on attempted murder and assault charges when police obtained evidence linking him to the unrelated murder of Tyshawn Bromfield, who was killed in a drive-by shooting in the Bronx in August 2010. Investigators applied for a search warrant to obtain Goldman's saliva for DNA analysis to see if his genetic profile would match DNA recovered from the car used in the shooting, and a prosecutor notified Goldman's defense attorney in the assault case of the warrant application.

Supreme Court refused to allow defense counsel to review the warrant application or to challenge it at a pre-trial hearing, saying "search warrants ... have always been ex-parte." Defense counsel contended he was entitled to argue against the warrant under Matter of Abe A. (56 NY2d 288 [1982]), which addressed a warrant to obtain a blood sample from a suspect. The decision says "Fourth Amendment safeguards should be seen as implicated at two discrete levels," first the detention of the person and second the seizure of biological evidence. In its discussion of the first level, the Court of Appeals said "when frustration of the purpose of the application is not at risk, it is an elementary tenet of due process that the target of the application be afforded the opportunity to be heard in opposition before his or her constitutional right to be left alone may be infringed." Supreme Court said the right to notice and be heard applied only to the first-level seizure, detention of the person, and not to the second-level seizure of biological evidence. The court said "this case does not have a first stage seizure ... because your client is in custody, and therefore, notice to you is totally unnecessary to bring him constitutionally before this court...."

When Goldman's saliva sample matched the DNA from the car, he was charged with murder. A jury acquitted him of murder, but convicted him of first-degree manslaughter. He was sentenced to 25 years to life in prison.

The Appellate Division, First Department reversed and suppressed the DNA evidence, ruling Goldman was entitled to challenge the warrant application. It said "special rules apply to evidence to be taken from a suspect's body" under Abe A. "We agree with defendant that the mere fact that the Abe A. court placed its pronouncement regarding notice in the midst of its discussion of the first level of intrusion at issue there does not establish that the principle announced applied only to that first level. Nothing in the Court's opinion suggests a basis for applying the 'elementary tenet of due process' described by the Court only to the first part of an application for an order to physically detain a person and then make a corporeal search."

The prosecutors argue that, because Goldman was already in custody, a warrant based on probable cause was "constitutionally sufficient to obtain a saliva sample" and no "adversarial hearing" was required. They say "it is well-established that applications for a search warrant are conducted ex-parte," in part to protect ongoing investigations and the safety of witnesses. The Abe A. court bifurcated its analysis and "held that the first seizure of the person to bring him within the government's control must be done on notice," but "made no mention of the same requirement for the second seizure implicating a 'bodily intrusion,'" they say. Defendants would still retain their right to "pursue traditional means of challenging the warrant" after it is issued.

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