State of New York
Court of Appeals

To be argued Tuesday, October 5, 2021 (arguments begin at 2 p.m.)

No. 59 White v Cuomo

The State Legislature amended the Racing, Pari-Mutual Wagering and Breeding Law in 2016 by enacting a new article 14 to permit interactive fantasy sports (IFS) contests, in which players pay entry fees to an IFS provider, select fantasy teams of real-world athletes, and compete against other players for cash prizes based on the performances of their chosen athletes in actual sporting events. Article 14 declares that IFS contests do not constitute gambling as defined in Penal Law § 225, thereby eliminating criminal penalties for IFS; and it provides for consumer safeguards, minimum standards and the registration, regulation and taxation of IFS providers. Jennifer White and three other plaintiffs brought this action against then-Governor Cuomo and the State Gaming Commission to strike down article 14 as unconstitutional. They contend its authorization of IFS contests violates article I, section 9 of the State Constitution, which states that "no lottery or the sale of lottery tickets, pool-selling, book-making, or any other kind of gambling ... shall ... be authorized or allowed within this state," except for state run lotteries, pari-mutual betting on horse races, and state authorized casinos.

Supreme Court granted partial summary judgment to the plaintiffs, ruling that article 14's authorization for IFS contests violates the constitutional prohibition of gambling. It relied on Penal Law § 225, which defines "gambling" as a person betting on "a contest of chance or a future contingent event not under his control or influence; and defines "contest of chance" as any game "in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein." While IFS players may employ skill in choosing their teams, the court said, "IFS involves, to a material degree, an element of chance, as the participants win or lose based on the actual statistical performance of groups of selected athletes in future events not under the contestants' ... control or influence." However, it upheld the portion of article 14 that eliminates criminal penalties for IFS contests.

The Appellate Division, Third Department upheld, on a 4-1 vote, the finding that the statutory authorization of IFS violates the constitutional ban on gambling. The Constitution does not define "gambling," but the majority said "the current Penal Law definition comports with the common understanding of the meaning of the constitutional prohibition" and encompasses IFS contests. "[A]lthough participants in IFS contests may use their skill in selecting teams, they cannot control how the athletes on their IFS teams will perform in the real-world sporting events.... In other words, the skill level of an IFS contestant cannot eliminate or outweigh the material ... role of chance in IFS contests." It modified the judgment by striking down the decriminalization of IFS contests, saying the Legislature would not have wanted to leave them entirely unregulated.

The dissenter argued that "our judicial inquiry is limited to deciding whether the Legislature rationally determined, after hearing and considering evidence, that IFS contests are not 'gambling' as defined under Penal Law § 225.00.... [A]rticle 14 was constitutionally enacted because the legislative record supports that the outcome in an IFS contest neither depends (1) to a 'material degree upon an element of chance' nor (2) upon 'a future contingent event not under [the contestants'] control or influence...." He said the Legislature "concluded that the proper focus is not on the participants' influence over the real world events and a specific athlete's performance, but the participants' unquestionable influence on winning the contest by making skillful choices in assembling a fantasy roster."

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State of New York
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To be argued Tuesday, October 5, 2021 (arguments begin at 2 p.m.)

No. 22 People v Howard Powell

Howard Powell was arrested in Queens in March 2010 while in possession of crack cocaine and a pipe. He was 51 years old and had an intellectual disability, a history of psychiatric illnesses and seizures which he treated with several prescribed medications, and also a history of drug abuse. Officers took him to the 114th Precinct and questioned him about several recent robberies. Powell denied any involvement and was detained at Central Booking for the night. He was returned to the precinct the next morning and ultimately admitted in signed statements that he robbed two women at knife-point in separate incidents days before his arrest. Both victims then identified him in lineups. He was charged with two counts of first-degree robbery. Contending at a pre-trial hearing that his confessions were false, Powell said he had not taken his prescription medications on the day of his arrest, but had used cocaine and heroin. He also testified that officers retrieved his medications from his home after his arrest, but refused to give him access to them until after he confessed the next day.

At trial, Powell sought to introduce testimony of Dr. Allison Redlich, a research psychiatrist, as an expert on "the phenomena of false confession." Supreme Court denied the request after a Frye hearing, saying, "Dr. Redlich's testimony did not convince this court that an expert's testimony on the issue of false confessions is scientifically reliable." Further, the court said, "Dr. Redlich never personally examined this defendant.... [T]his court will not allow the defendant to call a witness in the area of false confessions to testify about the general nature of and situations where an individual is likely to render a false confession. This court will only permit a witness in this area to testify who has personal knowledge of this case, the circumstances under which the defendant made these alleged confessions, and this defendant's mental infirmities." The jury convicted Powell of one count of first-degree robbery, he pled guilty to the second count a short time later, and he was sentenced to 25 years to life in prison.

The Appellate Division, Second Department affirmed. "With regard to expert testimony on the phenomenon of false confessions, in order to be admissible, 'the expert's proffer must be relevant to the particular [defendant] and interrogation before the court,'" it said, citing People v Bedessie (19 NY3d 147). "Here, the defendant failed to establish that his proffered expert testimony was relevant to the specific circumstances of this case...."

Powell argues that the scientific reliability of research into false confessions was established in New York law by Bedessie, which said belief that "the phenomenon of false confessions is genuine has moved from the realm of startling hypothesis into that of common knowledge, if not conventional wisdom." Bedessie also said "in a proper case expert testimony on the phenomenon of false confessions should be admitted." Powell says Dr. Redlich established the relevance of her testimony by proposing "to testify that appellant ... exhibited a number of situational factors rendering him vulnerable to false confession: a lifelong history of psychiatric illness, profound ... cognitive impairments; and longstanding polysubstance abuse;" as well as "the 24-hour length of the custody and interrogation."

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To be argued Tuesday, October 5, 2021 (arguments begin at 2 p.m.)

No. 60 People v Don Williams

When Rochester police officers executed a search warrant at the home of Don Williams's girlfriend in May 2013, they found a loaded semi-automatic handgun and small baggies containing cocaine. Williams admitted to them that the gun and cocaine were his, though he later testified at trial that he was unaware a gun or drugs were in the apartment.

During deliberations, the jury sent a note asking for "instruction relating to definitions of the law," and a deputy told the judge a juror told him they wanted the law placed on an overhead projector so it could be read. After the jury clarified its request, the judge and attorneys agreed on which portions of the instructions would be re-read to the jury. However, defense counsel objected to projecting the instructions, which included the text of Penal Law statutes governing the charges, on a screen for the jurors to read. "I don't believe that placing it on the visualizer is really different from handing them a written copy," he said. "I think that once we start handing them instructions in written form, whether it is visually or physically, that they then start having the ability to interpret based on how they see the words...." Supreme Court had the instructions projected on a screen and scrolled through as he read them aloud. Williams was convicted of one count each of second-degree weapon possession and third-degree drug possession and was sentenced to seven years in prison.

On appeal, Williams contended the court's decision to project the instructions for the jury over his objection violated CPL 310.30, which concludes, "With the consent of the parties and upon the request of the jury for instruction with respect to a statute, the court may also give to the jury copies of the text of any statute which, in its discretion, the court deems proper."

The Appellate Division, Fourth Department affirmed. Noting that the jury had asked the court to project the instructions on a screen and that "the jury was not supplied with a physical copy of the court's instructions," the Appellate Division said, "Under these circumstances, we conclude that the court did not err inasmuch as '[t]he projected charge was substantially the same as the oral charge, and the process took place entirely in the courtroom under the court's supervision and guidance. In short, there was no danger that the jurors would be left to interpret the law themselves'...."

Williams argues the trial court committed reversible error "by providing the jurors with a copy of the text of the statute by displaying the jury instruction without the consent of defense counsel." He says CPL 310.30 "expressly prohibits providing jurors with a copy of the text of any statute without consent of the parties. The phrase 'give a copy' as used in the statute was not limited in any way by the legislature and should be read as an umbrella term, encompassing the provision of both physical and electronic reproductions of the text. The consent requirement ensures that if such copies are to be provided, this only occurs in a manner that is fair to and agreed upon by all parties." He also argues the procedure denied him a fair trial by emphasizing the elements of the charges against him, which were projected on the screen, while "other instructions, such as the burden of proof or presumption of innocence," were not displayed.

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