

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 14, 2022

No. 78 Matter of Green v Dutchess County BOCES

Eric Watson was employed by Dutchess County BOCES in 2007, when his right leg was injured in a work-related accident. In 2012, a Workers' Compensation Law Judge (WCLJ) classified him as having a permanent partial disability and found he was entitled to wage-loss benefits for a maximum of 350 weeks under Workers' Compensation Law (WCL) § 15(3)(w). Watson received "non-schedule" disability benefits of \$500 per week until March 2018, when he died for reasons unrelated to his work injury after accruing 311.2 weeks of benefits. Soon after his death, an attorney for Watson's estate sought payment of the remaining 38.8 weeks of non-schedule benefits to Watson's 13-year-old son (hereafter, Claimant) pursuant to WCL § 15(4). The statute provides, "An award made to a claimant under subdivision three [of WCL § 15] shall in case of death arising from causes other than the injury be payable to" certain enumerated beneficiaries, including a surviving spouse or children under the age of 18 years.

A WCLJ ruled Claimant was not entitled to a posthumous award for his father's unaccrued benefits because Watson's claim "abated" upon his death.

The Workers' Compensation Board affirmed, ruling that WCL § 15(4) applies only to schedule loss of use (SLU) awards, not to non-schedule disability awards, which are "for the future loss of wages. This is not a set amount.... To be entitled to the awards the claimant must have causally related lost time. With a claimant's death, there are no future earnings to lose and no posthumous award is warranted."

The Appellate Division, Third Department reversed, saying, "[G]iven the plain and unqualified language of [WCL] § 15(4), and in consideration of the recent amendments to the [WCL] reflecting the Legislature's intent to eliminate disparity between the two different classes of permanent partial disability awards, we hold that Claimant is entitled to an additional posthumous award for the remaining cap weeks owed for decedent's nonschedule permanent partial disability award...." It said "we see no basis to distinguish SLU and nonschedule awards where the plain language of subsection (4) applies to any and all awards made under [WCL] § 15(3). Accordingly, the language employed in [WCL] § 15(4) reflects that the Legislature intended this subdivision to apply to all permanent partial disability awards made pursuant to subdivision (3) – that is, both SLU and nonschedule permanent partial disability awards...." It remitted the matter to the Board, which said it was "constrained to find" Claimant was entitled to the remaining 38.8 weeks of benefits at \$500 per week, payable in a lump sum of \$19,400.

The Board and BOCES argue the text of WCL § 15(3)(w) provides that benefits in a non-schedule award are only "payable during the continuance of such permanent partial disability" and only to the extent it impairs the claimant's "wage-earning capacity" and, since neither condition continues after death, the award abates and no posthumous payments to beneficiaries is required. They say the recent amendment to WCL § 15(3)(w) imposed a cap on the number of weeks a claimant may receive benefits, but did not guarantee that benefits would be paid for the entire period.

For appellant BOCES: Ralph E. Magnetti, Tarrytown (914) 332-1800

For appellant Workers' Comp. Board: Asst. Solicitor General Dustin J. Brockner (518) 776-2017

For respondent Claimant: Louis M. Dauerer, Poughkeepsie (845) 454-9700

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To be argued Wednesday, September 14, 2022

No. 79 **People v Rakeem Douglas**

Police officers stopped Rakeem Douglas in October 2015 as he drove a rental car in Manhattan after they saw him commit a series of traffic violations. They arrested him for possession of a gravity knife, which was clipped to his pocket, and impounded the car when they learned it was rented in his girlfriend's name and he was not an authorized driver. During an inventory search of the vehicle they found a handgun hidden between the trunk and the rear seat. Douglas moved to suppress the gun on the ground the search was improperly conducted.

At the suppression hearing, the officers testified that they adhered to the procedures set out in the NYPD Patrol Guide. They said they placed all items removed from the car into a large plastic bag, but they did not create a contemporaneous list of those items. They did not complete their written inventory of recovered items until the next day, about 11 hours after the search, and there was no testimony about the location or custody of the plastic bag during that period. The officers said the 11-hour delay was due in part to the discovery of the handgun, which required them to call in the Evidence Collection Team to process it for DNA and fingerprints, and to the need to complete required paperwork for the arrest. The inventory lists did not specify whether seized items were recovered from the car or from Douglas' person.

Supreme Court denied the motion to suppress, saying, "Based upon the written NYPD policy..., this court concludes that the officers were in fact guided by a set of policy and procedural guidelines which limited their discretion, safeguarded the defendant's constitutional rights, and fulfilled the purposes of a lawful inventory search." It also found the search was properly conducted in compliance with the Patrol Guide procedures. Douglas then pled guilty to second-degree criminal possession of a weapon and was sentenced to six years in prison.

The Appellate Division, First Department affirmed, saying "the officers followed a valid procedure for an inventory search of defendant's car.... The forms used by the police were sufficient to create a meaningful inventory list and there is no indication that the inventory search was a ruse for searching for incriminating evidence.... The delay in completing the inventory procedure was satisfactorily explained by the particular circumstances of the police investigation."

Douglas argues the NYPD's inventory search procedures fail to meet constitutional standards and his conviction must be reversed "because police recovered the gun under the authority of a protocol that failed to limit the officers' discretion and that undermined the purposes of an inventory search." Due to "the NYPD's inadequate inventory search protocol," he says "the police threw [his] property in a bag, left it unsecured in a busy police precinct for 11 hours, and then created an inventory – without the benefit of any list of the property made at the time of the search – on vouchers that provided no information about where or how the property was recovered." Without a contemporaneous list, he says, officers "have nothing to reference when later vouchering property that may have been stolen, lost, or contaminated during any delay...." He says a valid search protocol should also set a time frame for completing an inventory and require officers to secure seized property during any delay.

For appellant Douglas: Stephen R. Strother, Manhattan (212) 402-4100

For respondent: Manhattan Assistant District Attorney Stephen J. Kress (212) 335-9000

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No. 80 People v Tramel Cuencas

Tramel Cuencas and his brother were charged with murder, kidnapping and related crimes after Thomas Dudley, a drug dealer, was abducted from his Brooklyn home in November 2012. Dudley's body was found the next day in a park in Queens with his throat and wrists slashed. Four days later, after an eyewitness to the abduction identified Cuencas and his brother in photo arrays, a team of police officers arrived before dawn at a two-family house in Brooklyn, where the brothers were living on the ground floor, for the purpose of making a warrantless arrest. The officers knocked and a man who lived in the second-floor apartment, Kwamel Jeter, opened the door. A detective testified at a suppression hearing that when he asked for permission to enter, the man did not speak but stepped aside "and opened the door a little bit wider." Once in the vestibule, the detective said the officers saw Cuencas through the open door of his apartment and arrested him, then arrested his brother in a bedroom. Jeter appeared as a defense witness at the suppression hearing and said that as soon as he opened the door, the officers ordered him to put his hands up and pushed past him with their guns drawn. He said they did not ask for permission to enter and he gave no permission.

Supreme Court denied a defense motion to suppress incriminating statements Cuencas made and a cell phone seized after his warrantless arrest, finding the police testimony more credible than Jeter's and ruling that Jeter gave the officers "tacit consent" to enter and that he had apparent authority to do so. The court said the police, once they were inside and saw Cuencas, had probable cause to arrest him without a warrant. It did not address the claim that the police violated the defendants' right to counsel by making warrantless arrests for the specific purpose of delaying attachment of the right to counsel, which would have attached when a warrant was obtained, so they could question Cuencas and his brother without counsel present. Cuencas was convicted at trial of second-degree murder and robbery and sentenced to 25 years to life.

The Appellate Division, Second Department affirmed, saying, "[W]e discern no reason to disturb the hearing court's credibility determinations, including the factual finding that Jeter tacitly consented to the police entering the apartment where the warrantless arrest of the defendant took place.... [S]uch consent is sufficient to negate the defendant's claim" of a Fourth Amendment violation under Payton v New York (445 US 573). It left Cuencas' right to counsel claim undecided, saying, "While this issue presents what appears to be an important constitutional question of first impression, we see no viable path to resolving this question in the defendant's favor within the current framework of New York law. Although the hearing evidence fully supports the defendant's view that the police went to the subject residence with the intent of making a warrantless arrest..., New York law does not presently recognize a 'new category of Payton violations based on subjective police intent....'"

Cuencas argues the police violated his indelible right to counsel "by coming to his residence with the intention of arresting him there without an arrest warrant, despite having probable cause and time to obtain one, because appellant's right to counsel would have attached had they obtained a warrant."

For appellant Cuencas: Yvonne Shivers, Manhattan (212) 693-0085 ext. 245

For respondent: Brooklyn Assistant District Attorney Sholom J. Twersky (718) 250-3364