

# 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](mailto:gspencer@nycourts.gov).

To be argued Thursday, April 20, 2023

## No. 40 Matter of Teamsters Local 445 v Town of Monroe

This case arose after the Town of Monroe terminated Kathryn Troiano, the secretary to the Town Planning Board, without notice or explanation in 2017. Teamsters Local 445 filed a grievance challenging the termination on her behalf, contending that she was a member of its bargaining unit under the Union's collective bargaining agreement (CBA) with the Town and that she could not be terminated without notice of the charges and without following the grievance process agreed to in the CBA, including binding arbitration of disputes. Secretary to a planning board is classified as an exempt position under Civil Service Law § 41, which generally permits employers to make appointments without civil service examination and to terminate them without cause, but the Union's CBA provides that the Planning Board secretary is included in the bargaining unit and places no restrictions on the contractual protections that apply. The CBA excludes only one member of the bargaining unit from full protection, the bookkeeper to the town supervisor, which it says "is classified as an exempt position ... and, as such, the Union may not challenge such appointment or termination of such appointment through any administrative or legal proceeding." When the Town did not respond to its grievance for Troiano, the Union commenced this proceeding against the Town to compel arbitration.

Supreme Court denied the Town's motion to dismiss the suit, saying "the CBA clearly gave Troiano, in her capacity as planning board secretary, the right to pursue the grievance procedures and ultimately arbitration. The mere fact that she was exempt as a Civil Service employee did not bar the Town from providing her such protections as a matter of contract.... Contract provisions in collective bargaining agreements may modify, supplement or replace the more traditional forms of protection afforded public employees under the Civil Service Law."

The Appellate Division, Second Department affirmed, saying "there is no statutory, constitutional, or public policy prohibition against arbitrating this dispute regarding the termination of an employee in an 'exempt class' under the Civil Service Law.... Further..., the parties agreed, in their [CBA], to arbitrate the dispute. The CBA authorized the [Union] to file grievances, and ultimately demand arbitration, on behalf of bargaining unit employees, including the secretary to the Planning Board, irrespective of her class designation under the Civil Service Law." It further found that "a reasonable relationship exists between the subject matter of the dispute and the general subject matter of the CBA."

Supreme Court subsequently granted the Union's petition to compel arbitration.

The Town argues that exempt class employees are subject to termination at will and that submitting Troiano's termination to arbitration "would violate public policy by (1) contravening the legislature's decision-making when enacting CSL §§ 41(1), 75, and 76..., (2) impermissibly conflicting with the purposes of the merit and fitness requirements of [State Constitution] Article V, § 6, (3) essentially reclassifying a position without following the requirements of CSL § 20, and (4) stripping the appointing authority of its power to remove in contravention of the policy expressed in Article XIII § 2.... An act that would be void by resolution or local law cannot be made valid by instead insulating the act within a labor contract."

For appellant Town of Monroe: Brian D. Nugent, Nyack (845) 353-2000

For respondent Union: Louie Nikolaidis, Manhattan (212) 419-1500

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## No. 41 People v Dwight Reid

Dwight Reid was charged with murder and weapon possession for allegedly shooting Calvern Wallace between the eyes after an argument in a Manhattan bar in 2014. No eyewitnesses came forward, but the bar's manager identified Reid as the gunman from surveillance video that recorded the shooting.

Midway through his eight-day trial, Supreme Court closed the courtroom to all spectators for the last four days, which included witness testimony, summations, and the jury's verdict. A prosecutor moved to close the courtroom after informing the judge that photos and videos of Reid inside the courtroom had been posted on Instagram, some with the hashtag "Free Dick Wolf," Reid's nickname. The court said, "I will say that the people in the courtroom have been very intimidating. They intimidated a court reporter already. They stare people down. They're staring up here. I am closing this courtroom based on the fact that now there are pictures that were taken in this courtroom." Defense counsel objected, saying it would be fairer to require visitors to surrender their cell phones before entering the courtroom than to exclude everyone. The court denied the objection and said, "We closed the courtroom and I just want to say that I'm mindful of the sanctity of an open courtroom, I am, but this has been very cumulative." She said she was "concerned" when she saw a spectator hold up a phone as though taking photos, recounted how the court reporter "was very intimidated and very shaken" by her encounter with spectators outside the courtroom, and said, "I have felt the stares from the audience towards me.... [F]or all those reasons the presence of the spectators ... had a chilling effect on this courtroom and ... I have to close the courtroom. I don't believe there is a lesser remedy...." Reid was convicted of second-degree murder, two counts of weapon possession, and was sentenced to 50 years to life in prison.

The Appellate Division, First Department reduced Reid's sentence to 25 years to life and otherwise affirmed, saying, "The court's midtrial closure of the courtroom ... was a provident exercise of discretion under the extraordinary circumstances presented. The court made detailed findings regarding photos taken in the courtroom and posted online, and spectators' other conduct in the courtroom (some of which was directed at the court itself) and elsewhere in the courthouse. The court relied on undisputed facts, as well as its own observations of spectators' intimidating behavior and demeanor, the seriousness of which was not necessarily reflected in the cold record. The cumulative effect of all this misconduct by spectators in general established an overriding interest in closing the courtroom to prevent intimidation.... The only alternative to closure offered by defendant would have been ineffective...."

Reid argues that he was deprived of his constitutional right to a public trial "when the court closed the courtroom to all spectators midway through the trial based on the prosecutor's assertion that someone had taken cell phone pictures in the courtroom and posted them on the internet, as well as the court's own contention that certain spectators were 'staring' in an 'intimidating' fashion. The court neither held a Hinton hearing nor conducted any other fact-finding inquiry, and never determined who took the pictures or identified who among the spectators was 'intimidating.'" He says "defense counsel suggested the reasonable alternative of banning all cell phones from the courtroom," and the court's "failure to fairly consider or adopt an alternative to complete closure is a further constitutional error requiring reversal."

For appellant Reid: Richard M. Greenberg, Manhattan (212) 763-5075

For respondent: Manhattan Assistant District Attorney Rachel Bond (212) 335-9000

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To be argued Thursday, April 20, 2023

## No. 42 People v Hanza Muhammad

Hanza Muhammad was charged with the murder of John White, who was shot ten times in a Syracuse parking lot in 2017. Dwayne Merritt, a friend of Muhammad, witnessed the shooting and testified as a key witness for the prosecution.

The trial judge explained to the County Court gallery that he had a standing policy of not allowing spectators to enter or leave the courtroom while a witness was testifying to prevent “spectator traffic” from distracting witnesses, attorneys, jurors, and the court reporter. On the morning Merritt was to testify, a number of people – including relatives and friends of the victim and of Muhammad – arrived early to make sure they could get in to watch. The courtroom doors were closed, but not locked, and court officers posted at the doors did not invite them to enter. They were not aware when Merritt began to testify and 40 minutes later, after defense counsel had begun to cross examine him and the waiting group of spectators had grown to about 20 to 25 people, a colleague texted the prosecutor to ask, “Is it a problem that the defendant’s family was kept out of the courtroom for” Merritt’s testimony? The prosecutor informed the court of the crowd waiting outside and the court paused the proceedings to allow them to enter.

The court held an evidentiary hearing the next day, saying “there may have been an unintentional misunderstanding that may have led to spectators not being present” for Merritt’s testimony. After hearing from 11 witnesses and reviewing security video of the hall outside the courtroom, defense counsel moved for a mistrial, contending the court, through its “standing policy,” had “delegated to the court officers the control over entry to the courtroom,” which resulted in a violation of Muhammad’s right to a public trial. The court denied the motion, ruling “there was no courtroom closure here.” The hearing evidence established that the court itself did not exclude spectators and “that court security did not affirmatively act to close the courtroom to any spectator at a time when a witness was not testifying,” it said. Spectators did not appear ask officers if they could enter “and merely assumed that they were not being permitted to enter.” Muhammad was convicted of second-degree murder and weapon possession and was sentenced to 40 years to life in prison.

The Appellate Division, Fourth Department affirmed. “Although we do not approve of the court’s standing policy of essentially locking the courtroom doors while witnesses are on the stand, defendant did not object to the court’s policy and does not challenge it on appeal.” It rejected his claim that “the court deputies are an extension of the court and that their malfeasance in the hallway should therefore be imputed to the court,” saying a violation of the right to a public trial “requires an affirmative act by the trial court.... Here, people were excluded from the courtroom not by any affirmative act of the court, but instead by a confluence of factors outside the court’s knowledge and control.”

Muhammad argues, “County Court’s officers were subject to its ‘direction and control’ ... and thus were its agents.... Accordingly..., the officers’ exclusion of spectators was the court’s exclusion of spectators – even if [the judge] did not knowingly authorize their exclusion. Certainly, the court itself must be responsible for the consequences of its officers’ actions as they attempt to implement the court’s own directives....” He also argues that his attorney’s “failure to object to County Court’s unconstitutional standing order forbidding spectator entry during witness testimony” violated his right to effective assistance of counsel.

For appellant Muhammad: Paul J. Connolly, Delmar (518) 439-7633

For respondent: Onondaga County Sr. Asst. District Attorney Bradley W. Oastler (315) 435-2470