State of New York
Court of Appeals

To be argued Tuesday, April 8, 2025

No. 42 Glen Oaks Village Owners, Inc. v City of New York

Plaintiffs – the owners of two cooperative buildings in Queens and a mixed use building in Manhattan – brought this action against the City of New York to strike down Local Law 97, which was enacted as part of the City's "Climate Mobilization Act" in 2019 to reduce greenhouse gas emissions from private buildings larger than 25,000 square feet. The statute imposes civil penalties on building owners who fail to meet its energy efficiency and gas emission standards. The plaintiffs contend that Local Law 97 is preempted by the State's "Climate Leadership and Community Protection Act" (CLCPA), which took effect in January 2020 with a goal of reducing greenhouse gas emissions from all human-related sources statewide. They did not cite direct conflicts between Local Law 97 and the CLCPA, but argued the State had preempted the field of greenhouse gas (GHG) emission regulation by enacting the CLCPA.

Supreme Court granted the City's motion to dismiss the suit, finding the plaintiffs failed to show that the State intended to occupy the entire field of gas emissions regulation. "As Plaintiffs fail [to] show how Local Law 97 would prohibit conduct that the State permits or would impose restrictions on rights granted by the State, they have not identified an inconsistency on which to base an inference of preemption...," it said. "Defendants present evidence that there is no conflict between State and local law on the question of abating GHG emissions.... [R]ather than identifying any inconsistency or divergence in their objectives, New York State has repeatedly expressed its desire and intent to collaborate with the City and other local governments to abate GHG emissions under the CLCPA."

The Appellate Division, First Department modified the order by reinstating the plaintiffs' preemption claim. It said "defendants failed to show that New York State's CLCPA does not preempt New York City's Local Law 97. Defendant's contend that CLCPA § 11 (L 2019, ch 106, § 11), which states '[n]othing in this act shall relieve any person ... of compliance with other applicable federal, state, or local laws..., including state air and water quality requirements, and other requirements for protecting public health or the environment' is a savings clause for Local Law 97 because the latter 'protect[s] public health or the environment.' However, reading section 11 together with section 10 (L 2019, ch 106, § 10), which states '[n]othing in this act shall limit the existing authority of a state entity to adopt and implement greenhouse gas emissions reduction measures'..., one could conclude, as plaintiffs do, that section 11 applies to local laws 'other' than 'greenhouse gas emissions reduction measures.'"

The City, supported by the State as amicus curiae, argues the preemption claim should be dismissed because the CLCPA "embraces an 'all hands on deck' approach to climate change regulation, welcoming contributions from all levels of government, including the local level." It says the CLCPA "was enacted against a longstanding history of local regulation of air quality and building standards" and "the State has specifically embraced Local Law 97 as key to meeting statewide greenhouse gas emissions benchmarks." It says "neither the [CLCPA's] two saving clauses, nor anything else in the statute, even arguably evince preemptive intent."

For appellant City: Assistant Corporation Counsel Amy McCamphill (212) 356-2317
For respondents Glen Oaks et al (owners): Leigh M. Nathanson, Manhattan (212) 556-2100
For amicus State: Senior Assistant Solicitor General Philip J. Levitz (212) 416-6325

State of New York
Court of Appeals

To be argued Tuesday, April 8, 2025

No. 43 Matter of Joshua J.

Joshua J. was nine years old in 2018, when he and three siblings were removed from the home of his mother and placed in the temporary care of the Westchester County Department of Social Services (DSS). The mother had three prior neglect adjudications, and her children were placed in foster care after her five-year-old daughter, was twice found wandering in public without supervision. In both cases, the mother had left the girl with her 14-year-old daughter, who was found sleeping and unaware the girl had left the house. In March 2019, the mother consented to a finding of neglect without admitting to factual allegations in the County's petition.

In March 2022, Family Court extended the placement of Joshua and his brother in the County's care, but retained the original order's "permanency hearing goal" of returning them to a parent. In October 2022, the court issued a superceding permanency order that continued the placement without changes. At the hearing for the October 2022 order, when the mother's attorney sought to present evidence in support of returning the children to her, the court said "this court will not be returning children pre-disposition to a parent. I don't have the authority to do that.... [T]his court would not be issuing that order today regardless of what I were to hear." The attorney then said that "given the court's ruling, I'm not going to ask most of the questions that I was planning to ask." The mother appealed both of the 2022 orders.

Before the appeals were heard, superceding permanency orders were issued and the Appellate Division, Second Department dismissed both appeals as moot. In separate decisions using identical language, the courts said the appeals were academic because "the permanency hearing order has expired.... Contrary to the mother's contention, this case does not warrant the invocation of the exception to the mootness doctrine."

The mother argues that in foster care cases a permanency hearing must be held every six months and parents have a statutory right to appeal the resulting permanency order, but that right :is in almost every instance denied by a declaration of mootness by the Appellate Division, on the ground that by the time the appeal is decided, there has been a subsequent permanency hearing determination" that supercedes the order under appeal. She says an exception to mootness in such cases is necessary to effectuate the right to appeal. She further argues, among other things, that the court erred in ruling at the October 2022 hearing that it had no authority to order her children returned to her because Family Court Act § 1089 (d)(1) expressly provides that a court at a permanency hearing may direct "that the placement of the child be terminated and the child returned to the parent...." She says the error prevented her from presenting testimony that returning Joshua to her custody would be in his best interests, depriving her of due process.

For appellant mother.: George E. Reed, Jr., White Plains (914) 946-5000
For attorney for the child Joshua J.: William E. Horwitz, Briarcliff Manor (914) 479-0990
For respondent Westchester DSS: Deputy County Attorney Justin R. Adin (914) 995-2893

State of New York
Court of Appeals

To be argued Tuesday, April 8, 2025

No. 44 People v Carissa Hemingway

In September 2019, Carissa Hemingway was driving in Clinton County with her six-month-old child when a State Trooper pulled her over for using a cell phone as she drove. The trooper said her eyes were bloodshot and watery and he smelled the odor of marijuana. A blood test detected various drugs, including marijuana and Oxycodone, but no alcohol in her system. She was indicted on an E felony count of aggravated driving while intoxicated with a child passenger under Vehicle and Traffic Law (VTL) § 1192 (2-a)(b) and related misdemeanors.

For the felony count, the indictment alleged an underlying offense of driving while intoxicated under VTL § 1192(2), rather than driving while impaired by drugs under VTL § 1192(4). At the close of the prosecution's case, defense counsel moved for a trial order of dismissal of the felony charge, arguing the prosecution had presented no evidence of alcohol intoxication. The prosecution cross-moved to amend the indictment to allege an underlying offense of driving while impaired by drugs under subsection 4, rather then by alcohol under subsection 2. The prosecutor argued the error was merely typographical and could be corrected pursuant to Criminal Procedure Law (CPL) 200.70(1), which authorizes a trial court to "order the amendment of an indictment with respect to defects, errors or variances from the proof relating to matters of form, time, place, names of persons and the like," when the amendment does not change the theory of the prosecution or tend to prejudice the defendant.

County Court granted the prosecution's cross-motion, saying the amendment "does not change the theory of the case in any way or any of the discovery that was in place." Hemingway was convicted of all counts and sentenced to six months in jail followed by probation.

The Appellate Division, Third Department affirmed, saying, "The amendment was properly allowed, as it was to correct an apparent clerical error, did not change the People's theory of the case as reflected in the evidence before the grand jury, and defendant has demonstrated no prejudice.... To be sure, the People consistently maintained, both before the grand jury and at rial, that defendant drove while impaired by drugs – not alcohol."

Hemingway argues the trial court exceeded its authority under CPL 200.70 and that a superceding indictment was required to add a new underlying offense – driving while impaired by drugs – to support the felony count. She says the amendment permitted by the lower courts violated CPL 200.70(2), which prohibits the amendment of an indictment "for the purpose of curing: (a) A failure thereof to charge or state an offense; or (b) Legal insufficiency of the factual allegations...." She says it also contravened People v Perez (83 NY2d 269 [1994]), in which this Court ruled that trial courts exceeded their authority under the statute by allowing the amendment of an indictment to add a new count, on which the grand jury had voted to indict, that had been omitted from the indictment due to clerical error.

For appellant Hemingway: Mark Schneider, Plattsburgh (518) 566-6666
For respondent: Clinton County Chief Asst. District Attorney Jaime A. Douthat (518) 565-4770

State of New York
Court of Appeals

To be argued Tuesday, April 8, 2025

No. 45 People v T.P.

T.P. was charged with killing her boyfriend by stabbing him once in the chest with a four-inch kitchen knife during an altercation at a friend's house in Buffalo in September 2018. The boyfriend had a history of physically abusing T.P. and, on the night of his death, he was in violation of an order of protection requiring him to stay away from her. Witnesses testified that Wyatt had violently assaulted her on at least five prior occasions and that, on the night of the stabbing, they heard the pair arguing, punching sounds, and the defendant crying for help. When police arrived to investigate, they found T.P had fresh injuries including lumps on her head, a swollen eye, and physical evidence of strangulation. She raised a justification defense at trial, saying she had been in fear for her life.

The prosecutor argued at trial that T.P. had been the instigator of the altercation and that, because her boyfriend was unarmed, T.P should have attempted to flee before using the knife. The prosecutor said in summation that T.P. failed to testify that she was afraid for her life, although she had so testified, and defense counsel did not object to the mischaracterization. Supreme Court instructed the jury on the use of deadly force in self-defense, based on the Model Criminal Jury Instruction (CJI), but did not include a three-paragraph addendum informing jurors that they may consider testimony that a decedent "had a reputation for violence and engaged in violent acts," which is not normally allowed, in determining whether the defendant had a "reasonable belief" that deadly force was necessary to defend herself. Defense counsel did not request inclusion of the addendum in the court's instruction or object to its omission. T.P. was convicted of first-degree manslaughter and sentenced to eight years in prison.

The Appellate Division, Fourth Department reduced the prison term to four years, in the interest of justice, and otherwise affirmed. Addressing the trial court's omission of the CJI addendum, it said, "Inasmuch as the trial evidence regarding the victim's capacity for violence consisted almost entirely of direct evidence of his acts of violence toward defendant specifically, a charge addressing reputation evidence was unwarranted and, contrary to defendant's further contention, counsel was not ineffective for failing to request it."

T.P. argues, "Defense counsel failed to provide [her] with meaningful representation at her trial in two critical, interrelated ways. First, he repeatedly failed to ensure that the trial court properly instructed the jury on [her] justification defense – her sole defense at trial. Second, he failed to object to numerous instances of prosecutorial misconduct on summation, including the prosecutor's concededly false statement that [T.P.] did not testify that she was in fear for her life when she stabbed [her boyfriend], a key element of her justification defense...." She says "trial counsel's cumulative failures" deprived her of a fair trial.

For appellant T.P.: Corey M. Meyer, Manhattan (212) 450-4000
For respondent: Erie County Assistant District Attorney Daniel J. Mattle (716) 858=2255