

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.

To be argued Wednesday, October 14, 2015 (arguments start at noon)

No. 157 People v Frankie Hatton

(papers sealed)

Frankie Hatton was charged with six misdemeanor counts of forcible touching based on allegations that he slapped six different women on the buttocks in separate incidents on the streets of Brooklyn during a three week period in 2009. Prior to his arraignment, Hatton's defense attorney appeared on behalf of another defendant in an unrelated case and, before Hatton entered the courtroom, answered "yes" when a court officer asked, "Counsel, do you waive the reading of the rights and charges, but not the rights thereunder for this case and all other cases before the court?" Hatton ultimately pled guilty to one count of forcible touching (Penal Law § 130.52) and was sentenced to a year in jail.

On appeal, he argued the accusatory instrument to which he pled was jurisdictionally defective because its factual allegations did not address every element of the crime. Penal Law § 130.52 states, "A person is guilty of forcible touching when such person intentionally, and for no legitimate purpose, forcibly touches the sexual or other intimate parts of another person for the purpose of degrading or abusing such person; or for the purpose of gratifying the actor's sexual desire." In the factual portion of the instrument, the arresting officer said the victim told him Hatton "smacked [her] about the buttocks," which "caused [her] to become alarmed and annoyed;" an eyewitness said Hatton "smacked the buttocks of [the victim];" and Hatton himself admitted he "smacked the buttocks of [the victim]."

The Appellate Term (2nd, 11th and 13th Judicial Districts) reversed the conviction and dismissed the accusatory instrument, rejecting the prosecution's argument that Hatton impliedly waived his right to be prosecuted by a criminal information when his attorney made a blanket waiver of the reading of the rights and charges for all her cases. "The right to be prosecuted by information is a substantial right" and a waiver must be knowing and intelligent, it said. "A purported waiver through counsel of that right for all of the cases pending before the court ... prior to the defendant's appearance in court does not constitute a knowing and intelligent waiver...." Under the standards that govern informations, it held the accusatory instrument was facially defective. The factual allegations that the victim was "alarmed and annoyed" when Hatton "smacked" her sufficiently addressed the lack of consent and use of force elements of the crime, but there were "no factual allegations ... that the act was committed 'for no legitimate purpose,' and that defendant touched the victim's sexual or intimate parts 'for the purpose of degrading or abusing [the victim]; or for the purpose of gratifying [his] sexual desire'...."

The prosecution argues Hatton "impliedly waived his right to prosecution by information, because ... his attorney ... waived the reading of the rights for all cases before the court, and because the defendant subsequently entered a plea of guilty without asserting his right to prosecution by information or challenging the facial sufficiency of the accusatory instruments," and therefore the less rigorous standards for sufficiency of misdemeanor complaints should apply. Even if there was no waiver, it says the allegations were sufficient because Hatton's intent can be inferred from his conduct. "[A] person could not have any 'legitimate purpose' in forcibly touching another person's buttocks without her consent, particularly when ... that touching causes the person who is touched to become 'alarmed.' Moreover, in general, a person could not have any purpose, other than the purpose of 'degrading or abusing' the person who is touched or 'gratifying the actor's sexual desire,' in forcibly touching another person's buttocks without her consent...."

For appellant: Brooklyn Assistant District Attorney Leonard Joblove (718) 250-2511
For appellant Hatton: Arthur H. Hopkirk, Manhattan (212) 577-3669

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No. 158 Matter of Gentil v Margulis

Estevan Gentil was arrested for possession of a .38 caliber revolver near Captain Tilly Park in Queens in 2012. In a three-count indictment, he was charged with criminal possession of a weapon in the second degree (counts one and two) and criminal possession of a weapon in the third degree (count three). During its second day of deliberations, the jury sent out a note saying it was unable to reach a verdict on counts two and three. Defense counsel said the note implied the jury had reached a verdict on count one and asked Supreme Court to accept a partial verdict on that count. The court denied the request and directed the jury to continue deliberating. The next day, a juror informed the court that a family emergency had arisen and he did not believe he could concentrate on the case. Defense counsel declined to consent to the substitution of an alternate juror and, at the court's invitation, moved to discharge the distracted juror. He also renewed his request to take a partial verdict on count one. The court refused to accept a partial verdict before discharging the juror. Because defense counsel would not consent to seating an alternate juror, the court declared a mistrial on its own motion and set a date for a retrial.

Gentil later moved to dismiss the indictment, arguing that the court erred in declaring a mistrial without first determining whether the jury had reached a partial verdict and that a retrial would subject him to double jeopardy. Supreme Court agreed it erred in refusing to take a partial verdict on count one, but it dismissed only that count. When the distracted juror was discharged and the defense refused to consent to a substitution, the court said, "there was 'manifest necessity' for a mistrial, at least with respect to counts two and three, so that ... retrial of counts two and three is not barred on the basis of double jeopardy...." Gentil then brought this article 78 proceeding against the trial judge and the Queens district attorney to prohibit them from retrying him on the remaining counts.

The Appellate Division, Second Department granted Gentil's petition, ruling that double jeopardy barred his retrial. "Even if the reasons for declaring a mistrial are deemed actual and substantial, the court must explore all appropriate alternatives prior to declaring a mistrial..." it said. "Here, the trial court failed to explore all appropriate alternatives before declaring, on its own motion, a mistrial.... Accordingly, there was no manifest necessity for the declaration of a mistrial and, thus, retrial on counts two and three of the indictment is precluded."

The district attorney argues, "Defendant impliedly consented to a mistrial [on counts two and three] when he requested a deliberating juror be removed, refused to substitute an alternate, and asked for a partial verdict only as to count one, knowing full well that a retrial would ... be necessary as to counts two and three. Moreover, even assuming defendant's actions did not constitute a waiver..., a mistrial was manifestly necessary ... because the affected juror had been removed at defendant's request and an alternate could not be substituted in the absence of defendant's consent. In addition, it would not have been possible to take a partial verdict as to counts two and three, as the jury had never indicated it had a verdict as to those counts."

For appellant: Queens Assistant District Attorney Nancy Fitzpatrick Talcott (718) 286-6696
For respondent Gentil: Garnett H. Sullivan, South Hempstead (516) 285-1575

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No. 159 People v Pettis Hardy

Pettis Hardy was accused of stealing a purse belonging to Saajida Roberts in 2011 while he worked as a security guard at the Amnesia nightclub in Manhattan, where a music video was being filmed. Roberts lost track of her handbag during the filming and when she called the club to report it missing the next day, the club manager reviewed footage from its security cameras, which showed Hardy picking up the bag, searching through it, and carrying it around inside the club. None of the security video showed Hardy leaving the club with the purse. Donnelly McCants, who supervised the security guards, testified that he called Hardy and asked him to return the purse, but Hardy denied any knowledge of it. McCants testified that, when he said, "It's on the video," Hardy responded, "I don't have it, but I can get it." When Hardy returned to the club for his paycheck, without the handbag, police officers were waiting to arrest him.

After the close of evidence, Hardy's attorney asked Supreme Court to give the jury "the full circumstantial evidence charge. By that I mean the charge ... that instructs the jury that ... if there are multiple inferences that can be drawn and they are all reasonable..., the inference of guilt is not beyond a reasonable doubt." The court denied his request "because I don't think the case is based entirely on circumstantial evidence." After a full day of deliberations, the jury sent out a note that said, "We are unable to come to a unanimous decision on all 5 counts." Defense counsel moved for a mistrial, saying, "[T]his has been a relatively short trial. There were four witnesses called.... The jury has been deliberating longer than we had witnesses on the stand." The court replied, "The note does not use the strong type of language that we sometimes see. There is no indication they are hopelessly deadlock[ed]." It denied the motion and directed the jury to continue deliberating. The next day, the jury sent a note that said, "We are still unable to reach a unanimous decision for all 5 counts." The court denied Hardy's mistrial motion and delivered an Allen charge, urging the jury to reach a verdict. At the end of the day, the jury returned a guilty verdict on four counts of fourth-degree grand larceny and one of petit larceny. Hardy was sentenced to two to four years in prison.

The Appellate Division, First Department affirmed, saying, "The court properly declined to provide a circumstantial evidence charge, since there was both direct and circumstantial evidence of defendant's guilt, notwithstanding that defendant's intent was a matter to be inferred from the evidence...." It also said the trial court did not err in denying mistrial motions after both jury notes. "Although the trial was relatively short and simple, at each of the two junctures the circumstances indicated that further deliberations might be fruitful...."

Hardy says he was entitled to the full circumstantial evidence charge because there was no direct evidence -- from the security video, witnesses, or his own alleged statement: "I don't have it, but I can get it" -- that he took the purse out of the nightclub. The statement "was in no way an admission to actually stealing the purse," but was "direct evidence only ... that he knew where the purse was located and believed he could obtain it." He also argues the trial court's refusal to grant a mistrial resulted in a "coerced" verdict and deprived him of a fair trial.

For appellant Hardy: Eunice C. Lee, Manhattan (212) 402-4100

For respondent: Manhattan Assistant District Attorney Jared Wolkowitz (212) 335-9000

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No. 160 People v Antonio Martinez

(papers sealed)

Antonio Martinez was arrested in 2008 for allegedly raping a six-year-old girl ten years earlier, when she was staying at his family's apartment in the Bronx while her parents were away. The prosecution offered to accept a plea to second-degree rape with a sentence of 10 years of probation, but Martinez declined the offer. After a jury trial, he was convicted of first-degree rape, first-degree sexual abuse and two misdemeanors. Supreme Court initially sentenced him to 20 years in prison, but later granted his motion to set aside the determinate sentence as illegal and resentenced him to 10 to 20 years.

The Appellate Division, First Department affirmed the convictions and sentence in a 3-1 decision. It found the evidence was legally sufficient, there was no basis for disturbing the jury's credibility determinations, and concluded, "We perceive no basis for reducing the sentence."

The dissenter agreed the convictions should stand, but argued that the sentence, "the maximum available," was "unduly harsh." He said Martinez was 53, had no prior criminal record, had risen from poverty in the Dominican Republic to become a successful businessman in New York, and faced deportation after completing his sentence. "Numerous family members, community members and customers submitted letters ... attesting to his good works." The judge also noted the prosecution had offered a plea with a probationary sentence, which remained on the table through jury selection. "Accordingly, I dissent in part and as a matter of discretion in the interest of justice would reduce defendant's sentence to an aggregate term of 6 to 12 years, which appropriately takes into account the abhorrent nature of his conduct."

Martinez argues his sentence is illegal. "The objected-to and unexplained disparity between probation and 20 years' imprisonment raises a legal presumption that Mr. Martinez was unconstitutionally punished for exercising his right to trial," he says, and he "asks that the taint of judicial vindictiveness be removed from the lengthy incarceratory sentence he received after trial by reducing the disparity in his sentence or remanding for an explanation justifying that extraordinary disparity."

For appellant Martinez: David J. Klem, Manhattan (212) 577-2523 ext. 527

For respondent: Bronx Assistant District Attorney Jordan K. Hummel (718) 838-7322