State of New York
Court of Appeals

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NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

November 19 thru November 21, 2024

State of New York
Court of Appeals

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To be argued Tuesday, November 19, 2024

No. 93 Matter of NYC Organization of Public Service Retirees, Inc. v Campion

New York City had historically offered several Medigap insurance plans to its retirees who were eligible for Medicare and it paid the monthly premiums for the plans up to a statutory cap. Senior Care was the most popular option among retirees and the City paid the full amount of its $192 monthly premium. In July 2021, the City announced its adoption of a New Medicare Advantage Plus Plan (MAPP) that it had negotiated with the Municipal Labor Committee, an association of public sector unions. MAPP would be the only premium-free option for Medicare-eligible retirees. Retired city workers could choose to remain enrolled in Senior Care, but would have to pay the full $192 monthly premium.

The NYC Organization of Public Service Retirees, Inc., and several individual retirees filed this suit against the City and its Office of Labor Relations to challenge the new MAPP plan, contending that it violated City Administrative Code § 12-126. Section 12-126(b)(1) provides, "The city will pay the entire cost of health insurance coverage for city employees, city retirees, and their dependents, not to exceed one hundred percent of the full cost of H.I.P.-H.M.O. on a category basis."

Supreme Court ruled largely for the Retirees, ruling the City could not pass on any costs within the statutory cap for health insurance plans it offers to retirees. Rejecting the City's argument that section 12-126 only requires it to pay for one insurance plan, the court said the statute "is simply unequivocal and does not use terms like 'provide' or 'offer'; rather it uses the term will pay and it provides parameters of such payment." It said the statute does not require that the City "must give retirees an option of plans...; only that if there is to be an option of more than one plan, that the [City] may not pass any cost of the prior plan to the retirees, as it is the court's understanding that the threshold is not crossed by the cost of the retirees' current ... plan."

The Appellate Division, First Department affirmed, saying section 12-126(b)(1) requires the City "to pay the entire cost, up to the statutory cap, of any health insurance plan a retiree selects. This interpretation comports with the plain language of the provision as well as its legislative history.... Nothing in the statutory text or history supports respondents' interpretation that the provision is satisfied so long as they pay for the costs of one of the health insurance plans offered to retirees, which they have determined to be the [MAPP]." It said the City's claim that the cost of Senior Care exceeds the statutory cap "is improperly raised for the first time on appeal" and "involves factual issues that cannot be determined on the record."

The City argues that section 12-126 only requires it to provide one cost-free insurance plan to its retirees an the lower court decisions conflict with the statute's text and legislative purpose. "According to the Appellate Division, the City must either reject over half a billion dollars in annual savings or make a new Medicare Advantage plan the *only* option for Medicare-eligible retirees" and cancel the rest.

For appellants Campion & City: Assistant Corporation Counsel Richard Dearing (212) 356-2275
For respondent Retirees: Jacob S. Gardener, Manhattan (212) 335-2030

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To be argued Tuesday, November 19, 2024

No. 105 Matter of Bodenmiller v DiNapoli

Suffolk County Police Officer Robert Bodenmiller applied for accidental disability retirement benefits under Retirement and Social Security Law (RSSL) § 363, which provides enhanced pension benefits for police and firefighters who are permanently incapacitated by injuries sustained in an on-duty accident. He was assigned to desk duty in July 2019 when he pushed his chair back, one of its wheels caught in a rut or hole in the floor and the chair began to tip backward. He reached out and grabbed the desk to steady himself, allegedly injuring his neck and right shoulder, wrist and hand.

The State Comptroller denied Bodenmiller's application for a disability pension based on the findings of a hearing officer that his injuries were not the result of an "accident" within the meaning of the RSSL. The hearing officer found the injuries were the result of "a risk inherent in the performance of his ordinary job duties," which are not eligible for accidental disability retirement; and further found the mishap was not accidental because "the hazard reasonably could have been anticipated" since Bodenmiller had been on the desk assignment for four months and was aware of the rutted condition of the floor.

The Appellate Division, Third Department confirmed the denial of disability retirement. It ruled the Comptroller erred in finding the chair-tipping incident was a risk inherent in police work but, in a 4-1 decision, held the incident was not a qualifying "accident" under the RSSL. To determine whether an injury is accidental, "the proper standard is whether the petitioner 'could or should have reasonably anticipated' the precipitating event," it said, rejecting Bodenmiller's argument that the standard conflicts with Matter of Kelly v DiNapoli (30 NY3d 674). It said, "Given [Bodenmiller's] testimony [about the condition of the floor] and the photographs of the floor that were admitted, [the Comptroller's] finding that petitioner could have reasonably anticipated the hazard – i.e., that the small wheels catching a depression in the floor would cause the chair to tip – was reasonable and supported by substantial evidence, despite other reasonable interpretations."

The dissenter argued the tipping chair was "'sudden, unexpected'" and thus accidental. "From the very beginning, the Court of Appeals has instructed that in gauging whether an 'accident' occurred, 'we adopt the commonsense definition of a sudden, fortuitous mischance, unexpected, out of the ordinary, and injurious in impact'" he said, quoting Matter of Lichtenstein (57 NY2d 1010 [1982]). "The Court has further cautioned that requiring a petitioner to demonstrate that a condition was not readily observable in order to establish an accident is not the standard (see Matter of Kelly v DiNapoli, 30 NY3d at 685 n 3).... From my perspective, the 'reasonably anticipated' standard is no longer sustainable after Kelly." He said an actual knowledge standard "comports more with the commonsense definition of an accident adopted in Lichtenstein.... The operative point here is that claimant knew about the defects in the floor but not that the chair would get stuck and go over backwards. That the chair did so was the type of sudden, unexpected event that should as a matter of commonsense be deemed an accident...."

For appellant Bodenmiller: Wayne J. Schaefer, Smithtown (631) 382-4800
For respondent DiNapoli: Assistant Solicitor General Frederick A. Brodie (518) 776-2317

State of New York Court of Appeals

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To be argued Tuesday, November 19, 2024

No. 106 Matter of Compagnone v DiNapoli

Franco Compagnone, a police officer for the City of Rye, applied for accidental disability retirement under Retirement and Social Security Law (RSSL) § 363 based on line-of-duty injuries he sustained in October 2013 and June 2016, both times while working midnight shifts. In the 2013 incident, he was walking around the outside of a house that was under construction, shining his flashlight on the second floor where he had seen a suspicious light, when he fell into a hole that was about three feet deep and six feet long, injuring his right knee. He said there were no barriers, cones or netting around the hole. In 2016, he had been called to investigate a report of a suspicious person "going through cars" in a parking lot next to a baseball field when he slipped and fell on a rain-slicked wooden stairway that connected the lot to the ballpark.

The State Comptroller denied Compagnone's application for accidental disability benefits based on the hearing officer's findings that his injuries were not the result of an "accident" under the RSSL, which does not define the term. Under Matter of Kelly v DiNapoli (30 NY3d 674), an injury is accidental "when it is sudden, unexpected and not a risk of the work performed." The hearing officer said, "Encountering a hole or construction materials and debris at a construction site is not an unexpected event" and Compagnone "could have reasonably anticipated" such hazards. He said Compagnone's 2016 "search for a criminal suspect was part of his ordinary duties as a police officer" and he "could have reasonably anticipated the slippery condition of the steps" on a rainy night.

The Appellate Division, Third Department confirmed the denial of benefits, finding the injuries in both incidents were the result of risks inherent in police work. "Police officers are frequently injured due to hazards they encounter while traversing in dark and dangerous conditions; these circumstances are generally not deemed to be 'accidents' ... as they are considered inherent risks of the work, although they may be unusual."

Compagnone argues that his 2013 injury was the result of a qualifying "accident" under the RSSL because he "could not have reasonably known that there would be a man-made hole in the ground that was large enough to submerge his whole body" with no safety barriers of any kind. "Construction sites are generally subject to safety laws.... The fact that this hole was not sectioned off or made safe is substantial evidence that falling into that type of hole could not have been anticipated." He also contends it was not an inherent risk of his work. "[N]ot every fall while conducting an investigation in the dark is expected and also an inherent risk of the employment. By not considering the nature of the unseen condition, the Third Department may as well find that if [he] had stepped on a land mine, it would not have been an accident.... Hence, the nature of the unseen condition must be an integral part of the test."

For appellant Compagnone: Warren J. Roth, White Plains (914) 304-4353
For respondent DiNapoli: Assistant Solicitor General Dustin J. Brockner (518) 776-2017

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To be argued Tuesday, November 19, 2024

No. 107 Jones v Cattaraugus-Little Valley Central School District

This federal case focuses on the time constraints on filing claims under New York's Child Victims Act (CVA), CPLR 214-g, which was enacted in 2019 to revive time-barred civil claims of childhood sexual abuse. The statute took effect on February 14, 2019 and, after a six-month waiting period, allowed victims to file suit against their abusers during a two-year period from August 14, 2019 to August 14, 2021. The waiting period was meant to give adult survivors of child sexual abuse and their attorneys a head start to work on their cases before the clock began running on the time-limited window they would have to file them.

The plaintiff is a Pennsylvania resident who was sexually abused by a high school teacher in New York's Cattaraugus-Little Valley Central School District from 2009 to 2011 (the teacher pled guilty to third-degree rape in 2013). She commenced this suit against the School District in April 2019 – two months after the CVA took effect, but nearly four months before its filing window opened. The District raised various defenses in its answer, including an assertion that the suit was "barred by the applicable statute of limitations."

In September 2021, three weeks after the two-year filing window of CPLR 214-g closed, the District moved for summary judgment on its statute of limitations defense. It said the plaintiff's claims became time barred in 2013 and she could not rely on the CVA's revival provisions because she did not commence her suit within the filing window. The plaintiff argued the District should be equitably estopped from asserting the defense because it had known her filing was premature and litigated the case "in bad faith" until the filing period expired.

The District Court dismissed the case, saying "the District did not 'hide' the existence of a statute of limitations defense" and had no obligation to "inform [plaintiff] of her premature filing to allow her to preserve her claim."

The U.S. Court of Appeals for the Second Circuit is asking this Court to resolve what it identified as the central issue by answering a certified question: "Whether the six-month waiting period for claims filed pursuant to the claim-revival provision of [the CVA] establishes a statute of limitations, a condition precedent to bringing suit, or some other affirmative defense."

"New York courts have held that the end of the two-year filing window is a statute of limitations...," the Second Circuit said. "Less clear, and central to this appeal, is whether the filing window start date – which created a six-month waiting period from the effective date of the act – is also a statute of limitations." It said that if the waiting period is a statute of limitations, the dismissal of the suit would have to be affirmed; and if instead it established a condition precedent to bringing suit, "we would affirm the district court's judgment on the ground that [plaintiff] did not meet that condition." However, if the waiting period "establishes some other affirmative defense..., we would be compelled to reverse the district court's judgment because the defense was forfeited.... [T]he school district did not raise its waiting-period defense ... until summary judgment" and the plaintiff "would unquestionably suffer undue prejudice if the school district were allowed to add a defense based on section 214-g's waiting period after the two-year filing window has already closed."

For appellant Jones: Virginia Hinrichs McMichael, Radnor, PA (610) 230-6200
For respondent School District: Patrick J. Hines, Buffalo (716) 856-4000

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To be argued Tuesday, November 19, 2024

No. 108 People v Jason Brisman

Jason Brisman was serving a sentence of up to 53 years for manslaughter at the Elmira Correctional Facility in August 2017, when he was charged with promoting prison contraband for possessing a 1¾ inch long piece of sharpened porcelain. The District Attorney's Office made him its "standard offer" of a plea to attempted promoting prison contraband in exchange for the minimum sentence of 1½ to 3 years in prison. Brisman rejected the plea offer and went to trial, where he was convicted of first-degree promoting prison contraband. He asked Chemung County Court to impose the minimum sentence of two to four years, while the prosecutor sought a sentence of two and a half to five years. The court imposed the maximum sentence of three and a half to seven years, which was added to his existing prison term.

The Appellate Division, Third Department affirmed, rejecting Brisman's claim that his sentence was excessive. "Although defendant was sentenced to the maximum term," it said, "the record reflects that County Court relied on the appropriate factors in imposing defendant's sentence. Thus, we discern 'no extraordinary circumstances or abuse of discretion warranting a reduction of the sentence in the interest of justice'...." The court said Brisman "failed to preserve his claim that the sentence imposed served to punish him for exercising his right to a trial...."

Brisman argues the Third Department improperly applied the "extraordinary circumstances or abuse of discretion" standard to his claim and failed to adhere to Criminal Procedure Law (CPL) 470.15(6)(b), which provides that the Appellate Division, in reviewing claims of excessive sentences, may consider whether "a sentence, though legal, was unduly harsh or severe." He says, "The language in CPL 470.15(6)(b) is clear and unambiguous," and intermediate appellate courts should be required to use the "unduly harsh or severe "standard"selected by the Legislature" when they review criminal sentences. He further argues that those courts "should consider the disparity between a plea offer and the sentence imposed after trial" in determining whether a sentence is unduly harsh and possibly a "trial penalty" imposed for rejecting a plea.

The prosecution argues "the Third Department was free in its discretion to review the defendant's sentence for 'extraordinary circumstances or abuse of discretion,' even though the other departments do not expressly use that analysis when deciding whether to modify a sentence. Nothing in the Criminal Procedure Law, and no decision of this Court, renders the Third Department's practice improper or an abuse of its own discretion." Further, because "judges alone are responsible for sentencing a defendant convicted after trial, the prosecution's plea offer should not be a factor in choosing the defendant's sentence" and assessing any disparity between the two "would taint the sentence-review process under CPL 470.15 with irrelevant considerations."

For appellant Brisman: Clea Weiss, Rochester (607) 351-3967
For respondent: Chemung County Assistant District Attorney Nathan M. Bloom (607) 737-2944

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To be argued Wednesday, November 20, 2024

Nos. 109-117 Matter of 160 East 84th Street Associates LLC v New York State Division of Housing and Community Renewal (and eight other appeals)

The State Legislature enacted part D of the Housing Stability and Tenant Protection Act (HSTPA) on June 14, 2019 to repeal provisions of the Rent Stabilization Law that authorized high-rent / high-income deregulation (or "luxury deregulation") of rent stabilized apartments. The statute said it was to "take effect immediately," but was amended 10 days later to clarify that "any unit that was lawfully deregulated prior to June 14, 2019 shall remain deregulated." In September 2019, the State Division of Housing and Community Renewal (DHCR) issued an "Explanatory Addenda" to owners and tenants of apartments subject to pre-HSTPA luxury deregulation orders stating that the apartment would be deregulated only if "the lease in effect on the day" DHCR issued the deregulation order "expired before June 14, 2019." If the lease was still in effect on or after June 14, 2019, it said, the apartment would remain rent stabilized. DHCR cited a provision of the deregulation orders stating that "the subject housing accommodation is deregulated, effective upon the expiration of the existing lease," which it said meant deregulation was contingent on the lease expiring before the HSTPA took effect.

These lawsuits were brought by owners of Manhattan apartment buildings who obtained luxury deregulation orders prior to HSTPA, but were denied deregulation because their leases with tenants did not expire before the statute took effect. They sought to reinstate their deregulation orders and annul DHCR's addenda on the grounds that it was arbitrary, capricious, and an improper retroactive application of HSTPA.

Supreme Court dismissed the suits, finding DHCR's interpretation of the HSTPA was rational and not arbitrary, and reasonably concluded that an apartment subject to a deregulation order did not become "lawfully deregulated" unless its lease expired prior to June 14, 2019.

The Appellate Division First Department affirmed in each case in a series of decisions, rejecting the landlords' claim that DHCR improperly gave the statute retroactive effect. "DHCR's addenda explained that the effect of HSTPA part D was to prohibit the deregulation of units with leases expiring after June 14, 2019," it said. "That is, they simply noted the prospective effect of the June 14, 2019 statute on subsequently expiring leases. Thus..., the statute 'affect[ed] only the propriety of prospective relief ... [and] ha[d] no potentially problematic retroactive effect'...." In another decision, it said, "As petitioner concedes, under pre-HSTPA law, an apartment's deregulated status officially occurred at the expiration of the lease in effect at the time the deregulation order issued.... Thus, the housing accommodations at issue herein ... were not 'lawfully deregulated prior to June 14, 2019....'"

The landlords argue that their deregulation orders "were final, binding and no longer challengeable prior to the enactment of the" HSTPA and the expiration date of the lease merely determined when the deregulation could be implemented. "Employment of the HSTPA's enactment date of June 14, 2019 as the 'cut-off' date by which a tenant's lease must expire for luxury deregulation to be valid, permitted DHCR to claw back deregulation orders that were final and binding long before June 14, 2019, thereby unlawfully retroactively applying the HSTPA."

For appellant landlords: Jillian N. Bittner, Williston Park (516) 535-1700
For respondent DHCR: Senior Assistant Solicitor General Matthew W. Grieco (212) 416-8014

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To be argued Wednesday, November 20, 2024

Sabine v State of New York

Michael Sabine was injured in Seneca County in December 2013 when a State employee driving a State-owned pickup attempted to pass him, lost control and spun into his lane, where Sabine's pickup collided with it. Sabine sued the State for his injuries in the Court of Claims and, on September 26, 2018, the court granted his motion for partial summary judgment on the issue of liability, finding the State was negligent. After a bench trial, the court ruled on October 27, 2021 that Sabine had established that he sustained a serious injury within the meaning of Insurance Law § 5102(d) and awarded him $550,000 for pain and suffering.

The court also awarded him prejudgment interest of $6,187.50 for the two-month period from the date of the decision establishing serious injury to the entry of final judgment on December 22, 2021. Sabine did not contest the prejudgment interest award at the trial court, but argued on appeal that the interest should have run from the date, three years earlier, of the decision holding the State liable for negligence.

The Appellate Division, Fourth Department affirmed, but split 3-2 on whether the court should consider the issue at all. The majority said that, if Sabine failed to preserve his claim about the accrual date for prejudgment interest, it "falls within a recognized 'exception to the preservation rule'" for "a purely legal issue that could not 'have been obviated or cured by factual showings or legal countersteps in the trial court'...." However, it rejected his claim on the merits. "[P]rejudgment interest begins to run from the date on which a 'defendant's obligation to pay [a] plaintiff is established,'" it said, and under the No-Fault Law for automobile accidents, "a defendant is not liable for noneconomic loss under Insurance Law § 5104(a) unless the plaintiff proves that he or she sustained a serious injury." Thus, it said, the trial court "properly calculated the award of prejudgment interest from the date of the decision determining ... that claimant sustained a serious injury."

Two justices concurred in result on the ground that Sabine had not preserved the issue for appellate review," saying "we disagree with the majority's decision to invoke what should a very rare exception to rules of preservation only just to double down on our long-standing precedent."

Sabine argues the 4th Department's rule on the accrual date "is no longer good law given the more recent decision of Van Nostrand v Froelich, 44 AD3d 54 ... (2nd Dept., 2007) that found that serious injury is decidedly an issue of damages, and not liability, and that prejudgment interest runs from the date on which common-law liability (e.g., negligence) was established. This 2nd Department rule is in line with the rule on this issue in the 1st and 3rd Departments."

For appellant Sabine: Michael P. Kenny, Syracuse (315) 471-0524
For respondent State: Assistant Solicitor General Frederick A. Brodie (518) 776-2317

State of New York Court of Appeals

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To be argued Wednesday, November 20, 2024

No. 119 People v Kenneth Garcia

A 15-year-old boy, SC, was assaulted in Queens in May 2015 when three men knocked him to the ground, then punched and stomped him while one of them, wearing a yellow shirt, cut him on the forehead and arms. SC recognized the man in the yellow shirt and knew where to look for him. SC met a police officer and pointed out the building he had seen the man enter. The officer called for backup and SC told them his assailants were three Hispanic men: the one wearing a yellow shirt, one who was heavyset, and a third man he said was about the same age as the others. Four uniformed officers entered the building and found three Hispanic men matching SC's description: one in a yellow shirt, one heavyset, and a third – Kenneth Garcia – "in his late teens to twenties." The officers brought all three men outside together. When an officer asked SC, who was standing across the street, if anyone in the area looked familiar, he pointed out the three men as "the guys that jumped me" and they were arrested.

Prior to a joint trial, the codefendants moved to suppress the identifications, arguing the collective showup procedure had been unduly suggestive. Supreme Court denied the motion, saying, "[T]he showup identifications of the defendants were not unduly suggestive because they occurred close in time to the incident – within approximately 25 minutes – and close in space – approximately two blocks from the crime scene. The defendants were not handcuffed and there were other people on the sidewalk near the building." Garcia was convicted of second-degree assault and related crimes, and was sentenced to seven years in prison.

The Appellate Division, Second Department affirmed. "Showup procedures are disfavored, since they are suggestive by their very nature," it said. "However, they are ... permissible where exigent circumstances exist requiring immediate identification.... Here, exigent circumstances existed because the defendant and his codefendants were not under arrest yet, at least one of the perpetrators had a weapon, and the police needed to know whether they had apprehended the right people ... or whether they should keep looking for other suspects." The showup would be permissible even in the absence of exigent circumstances, it said, because it "was conducted in close geographic and temporal proximity to the crimes, and the procedure used was not unduly suggestive. The showup procedure was part of an unbroken chain of events and an ongoing investigation.... Although the defendant was standing with his codefendants and they were flanked by police officers..., the overall effect of these allegedly suggestive circumstances was not significantly greater than what is inherent in any showup procedure."

Garcia argues his identification should be suppressed and conviction reversed because the police made no effort to reduce the risk of "misidentification by association" at his showup. "Instead, the officers dramatically increased the suggestiveness of the procedure by bringing appellant outside, even though he matched no specific description, and 'clumping' him together with [the codefendants] – whom the complainant had 'adamantly' described and recognized. The officers' decision to group appellant together with others who were more familiar to the complainant for a single, collective showup was unduly suggestive as a matter of law...."

For appellant Garcia: David Fitzmaurice, Manhattan (212) 693-0085 ext 222
For respondent: Queens Assistant District Attorney Christopher J. Blira-Koessler (718) 286-5988

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To be argued Wednesday, November 20, 2024

No. 120 People v Parris J. Rufus

Parris Rufus was driving his Chevy Camaro in the right-hand lane of a three-lane highway in Rochester when State Police troopers pulled him over in March 2021. They said at a suppression hearing that they stopped him because they saw his passenger-side wheels cross the solid white "fog line" on the shoulder of the road three times, in violation of Vehicle and Traffic Law (VTL) § 1128(a). Rufus said he was heading home from the Black Bear Pub, where he worked, and said he swerved over the fog line because he was watching their patrol car approach him from behind. The troopers said Rufus had a strong odor of alcohol, had "bloodshot, glassy eyes, as well as droopy lids," and slurred some of his words. He failed three of four field sobriety tests, refused to take a preliminary breath test, and was arrested for driving while intoxicated.

Rufus moved to suppress the evidence and dismiss the charge on the ground it was the result of an illegal stop. He argued that the troopers lacked probable cause to believe that, by crossing the fog line, he violated VTL § 1128(a), which provides, "Whenever any roadway has been divided into two or more clearly marked lanes ... [a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety."

County Court denied suppression. Based on the troopers' testimony that Rufus crossed the fog line three times within a tenth of a mile, the court found they "had a reasonable belief that Defendant violated [section] 1128(a) and the initial stop of the vehicle was lawful." At a bench trial, Rufus was convicted of a felony count of driving while intoxicated and was sentenced to five days in jail and a $1,000 fine, among other things.

The Appellate Division, Fourth Department affirmed in a 3-2 decision. "[W]e conclude that 'the record supports the court's finding that the police officer lawfully stopped defendant's car for crossing the white fog kine in violation of [VTL] § 1128(a)," the court said, citing its prior decisions in People v Eron (119 AD3d 1358) and People v Wohlers (138 AD2d 957), which held that crossing the fog line is a per se violation of the statute. "The police officer testified at the suppression hearing that he observed defendant's vehicle depart from the lane unsafely, having witnessed it swerve and cross over the white fog line three times within a tenth of a mile, which is sufficient to provide probable cause for the stop."

The dissenters argued that Eron and Wohlers "were wrongfully decided" and should not be followed. "There is no language in the statute that expressly prohibits a driver from touching or crossing an edge line; it merely applies to unsafe movements outside of a designated lane...," they said. "[I]t is clear that the crossing of the edge line must be accompanied by some showing of unsafe conduct to establish a violation" of section 1128(a). Because "there was no testimony establishing that [Rufus] was speeding, driving erratically, or that he had violated any other provision of the [VTL]," the troopers lacked probable cause to stop him.

For appellant Rufus: Edward L. Fiandach, Rochester (585) 244-8910
For respondent: Monroe County Assistant District Attorney Amy N. Walendziak (585) 753-4670

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To be argued Wednesday, November 20, 2024

No. 121 People v Jerry Watkins

Two Rochester police officers were responding to a domestic dispute in January 2019 when they heard five quick gunshots fired nearby. Then they received a radio dispatch about a 911 caller reporting that shots were fired on Garfield Street and that three Black "kids" were walking together on Garfield, one of whom had a gun. The officers found four Black males walking together near the scene and, when the officers approached to ask where they had been, three of them stopped. The fourth man, Jerry Watkins, kept walking with his hands in the front pocket of his sweatshirt and then began to run. The prosecution called just one of the officers to testify at a suppression hearing and he said Watkins held his right hand in front of his body as if he were holding something in his pocket or waistband as he ran, while his left arm swung up and down. Both officers pursued him and the officer who did not testify at the hearing was the first to catch him and find a loaded handgun in his sweatshirt. Watkins waived his Miranda rights and said he found the gun on Garfield Street and fired it into the air to see if it worked.

Supreme Court denied Watkins' motion to suppress the gun and his statements, saying the officers were justified in approaching the four men. "Defendant then fled when approached by officers and asked to take his hand out of his pocket. Under these circumstances, that defendant ran ... provided the necessary reasonable suspicion to pursue" him. Watkins pled guilty to second-degree weapon possession and was sentenced to 3½ years in prison.

The Appellate Division, Fourth Department affirmed on a 3-2 vote. The majority said Watkins' "flight when lawfully approached by the police justified the ensuing pursuit, especially considering the unorthodox manner in which he was running, which, again, was observed before the officers gave chase.... At that point, it was reasonable for the officers to suspect that defendant possessed a firearm or was otherwise involved in the shooting that occurred minutes earlier less than a block away." It said Watkins failed to preserve his claim that the search was unlawful because the officer who caught him and found the gun did not testify at the suppression hearing, but also said the testimony of the officer who appeared at the hearing and the video from his body camera "was sufficient to establish the legality of the search and arrest."

The dissenters said the officers' pusuit of Watkins was unlawful because "the placement of one's hands in the pockets of one's sweatshirt or pants on a cold evening in the middle of a Western New York winter is subject to an innocuous, innocent interpretation and cannot ripen an encounter such as that here into one of reasonable suspicion justifying pursuit.... Although defendant was observed walking in the general vicinity of the reported gun shots, that observation does not provide the 'requisite reasonable suspicion,' i.e., 'in the absence of other objective indicia of criminality that would justify pursuit'...." They also argued that Watkins' claim that the search and arrest were unjustified was preserved and meritorious. "Notably, the officer who conducted the search did not testify at the suppression hearing, nor did he preserve his body camera footage.... We have previously held that the testimony of an officer who was present during a search but who did not conduct the search 'was insufficient to establish that the search of defendant's pocket was legal'...."

For appellant Watkins: Jane I. Yoon, Rochester (585) 753-4236
For respondent: Monroe County Asst. District Attorney Martin P. McCarthy, II (585) 753-4534

State of New York
Court of Appeals

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To be argued Thursday, November 21, 2024

No. 122 People v Edward Mero

Edward Mero was charged in 2017 with two counts of second-degree murder for unrelated crimes. The first charge stemmed from the death of Mero's roommate, Megan Cunningham, whose charred body was found after a fire at their Albany apartment in January 2013. The second was based on the death of Shelby Countermine, who was found in a shallow grave in the Town of Coeymans in May 2015.

County Court denied Mero's motion to sever the charges related to each victim for separate trials, finding that the charges were joinable because they were based on the same statutes and Mero failed to show good cause for severance. Evidence at trial established that Mero had been the last person to see both victims alive; and two inmates from the Albany County jail, where Mero was held awaiting trial, testified that he admitted killing Countermine and one of them said he also admitted killing Cunningham. Mero was convicted on all counts and sentenced to consecutive terms of 25 years to life.

After the trial, Mero filed a CPL 440.10 motion to vacate his conviction on the ground that his defense counsel had a conflict of interest due to her undisclosed business relationship with an Albany assistant district attorney (ADA) who served as co-counsel in prosecuting Mero. From 2014 to 2018, including the period of Mero's trial in 2017, his defense counsel paid the ADA $20,500 for drafting four appellate briefs in criminal cases outside of Albany County. The relationship was first disclosed by the ADA six months after Mero's trial ended. Supreme Court denied the motion to vacate, finding that "the potential conflict arising out of the business did not operate on the conduct of the defense" of Mero and "no confidences were disclosed."

The Appellate Division, Third Department affirmed in a 3-2 decision, ruling County Court did not err in denying the motion to sever the charges. Mero's "contention that the joinder of these counts caused him undue prejudice is purely speculative, as the record on appeal shows that the evidence relating to each victim was 'separately presented, uncomplicated and easily distinguishable'.... Additionally, County Court properly instructed the jury to separately consider the evidence applicable to each of the charged crimes ... and to avoid considering evidence of guilt on one count as propensity evidence of guilt on other charged counts.... Defendant fails to point to any place in the record where the People used any proof for impermissible propensity reasons, and we discern no such use." It said Supreme Court did not err in denying Mero's motion to vacate his conviction because he failed to establish that the "potential conflict of interest affected, or operated on, or bore a substantial relation to the conduct of the defense."

The dissenters said County Court abused its discretion in denying severance and the case should be reversed and remitted for separate trials. They said "it is much more likely that the jury would focus on the abhorrent common nature of the crimes than to focus on the fundamental differences of proof" and "there is great likelihood that the cumulative weight of the proof ... depicted [Mero] as having a propensity to commit [murder], and thus improperly swayed the jury to convict ... on this basis alone." They concurred that the potential attorney conflict did not require reversal because Mero "failed to produce anything other than speculation that this conflict affected his defense. Our lasting concern is whether, absent extremely unusual circumstances, such a showing can ever be established."

For appellant Mero: Matthew C. Hug, Albany (518) 283-3288
For respondent: Albany County Assistant District Attorney Emily Schultz (518) 487-5460

State of New York Court of Appeals

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To be argued Thursday, November 21, 2024

No. 123   People v Cleveland Lawson, a/k/a Emanuel Marks

NYPD officers stopped Cleveland Lawson's Toyota in March 2017, after they saw him make two U-turns on Lenox Avenue in Manhattan. When Lawson failed a breathalyzer test, they charged him with driving while intoxicated. Lawson moved to suppress his breath test results on the ground that they were the result of an unlawful traffic stop, arguing the prosecution failed to establish that the U-turns were illegal. Criminal Court granted the motion to suppress, finding the prosecutor failed to prove that portion of Lenox Avenue was in a "business district," in which U-turns are prohibited. The court denied the prosecutor's oral motion to reopen the hearing, saying, "You had your chance to meet your burden. The same statutes have been on the books forever. And this defendant has been in jail for nearly a year and a half...."

In a subsequent written motion to reargue the suppression motion, the prosecution asserted for the first time that the U-turns were illegal under section 4-07 of New York City's traffic rules, which prohibit U-turns on "divided highways." Criminal Court granted the motion to reargue, rejecting Lawson's argument that "the People cannot use a motion for re-argument to present the court with new arguments as to why the vehicular stop was lawful." The court then denied Lawson's motion to suppress, saying, "Because u-turns are prohibited on a divided highway, the u-turns that defendant made were illegal and the traffic stop was, therefore, valid." Lawson pled guilty to DWI and was sentenced to 40 days in jail.

The Appellate Term, First Department affirmed, saying "the court had 'inherent power to recall and vacate its initial suppression ruling, in which suppression had been granted'.... '[W]here there is a clearly erroneous dismissal..., It is unreasonable to foreclose a court from reconsidering its previous determination, and there is no indication that the Legislature intended to preclude the Judge from reinstating [a] ... dismissed count upon reargument'...."

Lawson argues that, "because the prosecution was provided with a full and fair opportunity to litigate the dispositive issues at the suppression hearing, the suppression court's denial of suppression, two and a half months after granting suppression, based on an entirely new legal theory not previously litigated, was not authorized as an exercise of a suppression court's 'inherent authority.'.... If sanctioned, the suppression court's actions would create an unworkable rule allowing the prosecution an unlimited number of opportunities to satisfy their burden, unbounded by time or cause."

For appellant Lawson: Iván Pantoja, Manhattan (347) 927-2012
For respondent: Manhattan Assistant District Attorney Jared Wolkowitz (212) 335-9000

State of New York Court of Appeals

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To be argued Thursday, November 21, 2024

No. 124 Hobish v AXA Equitable Life Insurance Company

In 2007, the AXA Equitable Life Insurance Company issued to the Hobish Irrevocable Trust a $2 million insurance policy on the life of Toby Hobish, who was then 82 years old. Her three adult children are the sole beneficiaries of the Trust. The cost of insurance (COI) rate, a major factor in determining premiums, was not guaranteed in the policy and AXA was entitled to increase it, but the policy provided, in part, "Changes in policy cost factors ... will be on a basis that is equitable to all policyholders of a given class...." In 2015, AXA announced a significant increase in its COI rates, which included an increase of 43.5 to 72.5 percent for policies that were issued for insureds who, like Hobish, were over 80 years old. In 2016, the Trust notified AXA it was surrendering its policy, under protest, "due to [AXA's] recent, unlawful, and inequitable increase in premiums." In return, AXA paid the Trust the surrender value of $400,000. Hobish and the Trust brought this action against AXA in 2017, asserting claims for breach of contract and violation of General Business Law (GBL) § 349. They alleged that AXA, which marketed the policy as a safe investment for the elderly, had singled out elderly insureds for exorbitant cost increases to induce them to surrender their policies. Hobish died in 2019.

Supreme Court denied the plaintiffs' motion for summary judgment on liability for their claim that AXA breached the policy provision requiring that policy cost increases be "equitable to all policyholders of a given class." It said the term "given class" was ambiguous and its meaning could not be resolved as a matter of law. The court denied AXA's motion for summary judgment dismissing the suit, but granted summary judgment to dismiss certain claims.

The Appellate Division, First Department affirmed, saying the term "a given class" is ambiguous and "the court was not required to resolve the ambiguity against [AXA], as the extrinsic evidence presented in this case was not conclusory." AXA's motion to dismiss the GBL § 349(h) claim was properly denied because "issues of fact exist as to whether there was consumer impact in this case." The court said the Trust's claim for nearly $1.6 million in compensatory and consequential damages was properly dismissed. "This amount allegedly represented the value of the death benefit, offset by the surrender payment made to plaintiffs" and other charges. Since the plaintiffs surrendered the policy, "the policy was no longer in effect and plaintiffs were no longer entitled to the $2 million death benefit." It said the Trust's claim for $12 million in punitive damages under GBL § 349(h) was properly dismissed because the statute caps awards at $1,000. "The statute only provides for these 'limited punitive damages'...."

The Trust argues, among other things, that the lower courts erred in ruling "the Trust waived any claim for breach-of-contract damages based on AXA's destruction of value in Mrs. Hobish's life insurance policy because the Trust surrendered the policy. This ruling is contrary to controlling precedent that a defendant's breach gives a plaintiff the right to terminate the contract and sue for damages based on the value of the contract – especially when defendant's breach was designed to force the plaintiff to terminate the contract." It argues the term "given class" is not ambiguous and the Trust is entitled to summary judgment on AXA's liability for breach of contract "because it is undisputed that AXA's substantial rate increase on the elderly Mrs. Hobish – with no rate increase for younger insured persons – was not equitable for persons in her 'given class' of 'Standard Non-Tobacco User' – as required by that contract."

For appellant Hobish: Gary J. Malone, Manhattan (212) 350-2700
For respondent AXA: Larry H. Krantz, Manhattan (212) 661-0009

State of New York Court of Appeals

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To be argued Thursday, November 21, 2024

No. 125 Calabrese v City of Albany

Henry Calabrese lost control of his motorcycle and fell on Lark Street in Albany when he struck a depression in the road in July 2019. He filed this personal injury action against the city. Albany moved to dismiss the suit on the ground that it had not received prior written notice of the defective road condition, as required by the Albany City Code.

The city received complaints about a large pothole in the vicinity of the accident scene through its online reporting system, SeeClickFix (SCF), which is monitored and maintained by its Department of General Services (DGS). There were four complaints in the fall of 2018 and a complaint of a "very large pothole" in May 2019. Calabrese also alleged that the city negligently created the defect in the street, an exception to the prior written notice requirement, when it performed an extensive excavation for an emergency water line repair in April 2019. He presented the expert opinion of a licensed engineer, who said in an affidavit that Albany improperly backfilled the excavation, causing the pavement to sink in a "precipitous process."

Supreme Court denied Albany's motion to dismiss, rejecting its argument that reports submitted through the SCF system do not qualify as prior written notice because they were not "actually given to the Commissioner of General Services," as required by the City Code. It also rejected the city's claim that it was entitled to immunity for its emergency excavation for the water line repair; and it said there are questions of fact about whether the city's repair work created Lark Street's defective condition, including the "weight and credibility" to be given to the plaintiff's expert.

The Appellate Division, Third Department affirmed, saying "the fact that defendant promoted the SCF program and the DGS Commissioner approved an internal departmental protocol for processing and responding to SCF complaints satisfies the "actually given to the Commissioner of General Services" requirement" of the City Code. While the SCG complaint form states that use of the system "does not constitute a ... valid prior written notice," it said, "Enforcement of that qualifier ... would allow defendant to encourage the public to utilize SCF to address real safety concerns, while at the same time deflating the legal impact of such a notice. Defendant cannot have it both ways." The court said, "In view of the temporal proximity of complaints that the excavation [in Lark Street] was sinking, and [the expert's] opinion that this was a 'precipitous process,' we find that plaintiff has raised a question of fact as to whether the excavation falls within the affirmative negligence exception...." Rejecting the city's claim of immunity for its emergency excavation work, it said "a municipality has a proprietary duty to keep its roadways in a reasonably safe condition ... for which immunity does not apply."

Albany argues the prior written notice requirement was not satisfied because notice of the Lark Street defect "was not sent to or received by its statutory designee;" because the "written notice requirement is not satisfied by electronic notice;" and because the requirement is not satisfied by "a communication sent to an employee of a statutory designee." It says the affirmative negligence exception to the notice rule does not apply because "the depression was not affirmatively created," but instead "appeared gradually due to natural forces." And it contends "the emergency excavation was a discretionary act taken in furtherance of a governmental purpose and is therefore clothed with governmental immunity."

For appellant Albany: Robert Magee, Albany (518) 434-5050
For respondent Calabrese: Peter P. Balouskas, Albany (518) 556-3428