

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 Tuesday, September 10, 2024

No. 72 Colt v New Jersey Transit Corporation

The interstate sovereign immunity issues in this case arose in February 2017, when a New Jersey Transit Corporation (NJT) commuter bus struck Jeffrey Colt, a pedestrian who was in midtown Manhattan sidewalk with the “walk” signal in his favor. He suffered a fractured foot, among other injuries. Colt and his wife brought this personal injury action against NJT and its bus driver in New York. Almost three years later, and after the New Jersey statute of limitations expired, NJT moved to dismiss the action on the ground that it was immune from suit in New York under the doctrine of sovereign immunity.

Supreme Court denied the motion to dismiss, saying “it has taken defendants three years to raise a jurisdictionally based defense.... NJT has waived its right to object to jurisdiction in New York.” It said, “To hold NJT immune from suit for negligence in motor vehicle accidents in New York would constitute a miscarriage of justice to the victims of accidents involving NJT vehicles, which operate in New York on a daily basis.”

The Appellate Division, First Department affirmed in a 3-2 decision. Although it found NJT “did not expressly and unambiguously waive the sovereign immunity defense,” the majority declined to dismiss the New York action because the plaintiffs would have been left without any forum. New Jersey law requires suits against municipal corporations to be commenced in the county where the claim arose, so the plaintiffs “cannot seek redress for NJT’s tortious conduct in New York State courts under the doctrine of sovereign immunity and are precluded from suing in New Jersey state courts merely because the cause of action did not arise in that state.... Thus, our plaintiffs and other similarly situated plaintiffs are without a judicial forum. This absurd result cannot be jurisprudentially justified. We hold that under these circumstances the dismissal of this action against NJT in the absence of an available judicial forum in New Jersey because the injury occurred in New York is an affront to our sense of justice and cannot be countenanced.”

The dissenters argued the majority was “flatly wrong” to find that the plaintiffs could not have filed their suit in New Jersey and, in any case, the U.S. Supreme Court settled the immunity issue in Franchise Tax Board of California v Hyatt (139 S Ct 1485 [2019]) by holding the Constitution does not permit a nonconsenting state to be sued in another state’s court. “[E]ven if the majority were correct in believing that this action could not have been maintained in New Jersey, that would have no bearing on this court’s duty to honor New Jersey Transit’s assertion of its sovereign immunity defense under the United States Constitution, as authoritatively construed by the United States Supreme Court in Hyatt.”

For appellants NJT et al: Katherine L. Pringle, Manhattan (212) 833-1100

For respondent Colt: Brian J. Shoot, Manhattan (212) 732-9000

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No. 73 People v Anthony Blue

Anthony Blue and a co-defendant, Carnona Puello, were arrested and charged with a series of burglaries in Washington Heights in August 2012, and the police seized cell phones from both men. On September 5, 2012, a judge issued a search warrant to examine the phones and stated that the warrant was to be deemed executed on the date it was issued. The forensic examination of the phones actually began 19 days later, on September 24, and investigators ultimately recovered incriminating text messages between Blue and Puello discussing the burglaries. The case was initially dismissed and Blue moved to Florida, but the two men were jointly indicted on six counts of second-degree burglary on March 25, 2013. Blue waived extradition from Florida and was arraigned on the charges in Manhattan on June 13, 2013. More than two-and-a-half years later, Blue was convicted at trial in October 2015 of five of the burglary counts and was sentenced to 25 years in prison.

Blue argued on appeal that the search of his phone was improper because it did not comply with Criminal Procedure Law (CPL) § 690.30(1), which states, “A search warrant must be executed not more than ten days after the date of issuance.” He said no part of the search authorized by the September 5, 2012 warrant occurred until more than ten days after the warrant was issued and, therefore, the text message evidence should be suppressed. Among other issues, Blue argued his right to a speedy trial under CPL 30.30 was violated by the lengthy delay between his indictment and trial. In particular, he contended the prosecution should be charged with 57 days of delay from April 17, 2013, when Puello filed pre-trial motions, to June 13, 2013, when Blue was arraigned. The trial court declined to charge that time against the prosecution based on CPL 30.30(4)(d), which excludes “a reasonable period of delay when the defendant is joined for trial with a co-defendant...” Blue argued the exclusion did not apply because until he was arraigned he could not be “joined for trial” with Puello. Blue, who represented himself at trial, argues in a pro se brief that his right to counsel was violated because the trial court failed to warn him of the risks of proceeding pro se.

The Appellate Division, First Department affirmed the conviction, saying the trial court “properly admitted text messages and other information obtained from [Blue’s] cell phone. Although the forensic examination of the phone occurred more than 10 days after issuance of a warrant, there was no violation of CPL 690.30(1), because the warrant expressly stated that it was ‘deemed executed at the time of issuance,’ and the phone remained in police custody throughout.” The court found there was no statutory speedy trial violation, implicitly rejecting Blue’s claim that the 57 days of pre-arraignment delay should not be excluded. It said the prosecution was chargeable with 180 days of delay, “which falls short of the 184 days required for dismissal of this case.”

For appellant Blue: Scott M. Danner, Manhattan (646) 837-5151

For respondent: Manhattan Assistant District Attorney Philip V. Tisne (212) 335-9000

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No. 74 People v Kerbet Dixon

Kerbet Dixon was arrested in June 2011 for allegedly sexually assaulting three underage girls in Queens in 2008 and 2009, when they ranged in age from 5 to 14 years old. The police also seized two computers from his home, on which they found hundreds of images of child pornography. After obtaining new assigned counsel appointed by the court three times, Dixon, a veteran court officer in New York City Civil Court, represented himself at trial. He complained during the trial that jail authorities had recorded his phone calls to witnesses as he was preparing them to testify and that the prosecutor obtained an unfair tactical advantage by listening to those recordings and using them during cross-examination of his witnesses. He said, “I believe ... it violates my attorney/client relationship because [the prosecutor] is now listening to me. I’m a pro se defendant. He’s listening to me talk to my witnesses.... He had all these things set so he has an unfair advantage of listening to me talk to my witnesses and I don’t think that’s fair because if I was in his office while he’s talking to his witnesses that wouldn’t be fair.” The trial court told Dixon that he knew his calls from jail would be recorded, and ruled there was no violation of attorney-client privilege because a phone conversation in jail is not private.

Dixon was convicted of multiple charges including first-degree course of sexual conduct against a child, third-degree rape and sexual abuse, and more than 600 counts of possessing and promoting a sexual performance by a child. He was sentenced to 25 $\frac{1}{3}$ to 30 years in prison.

The Appellate Division, Second Department affirmed, rejecting Dixon’s claim that the trial court failed to determine that his decision was unequivocal, knowing, voluntary, and intelligent, rendering his waiver of his right to counsel in order to proceed pro se invalid. It said “Supreme Court conducted the requisite ‘searching inquiry’..., including ‘warn[ing] [the] defendant forcefully that he did not have the training or knowledge to defend himself, that others who had done so had been unsuccessful and that if he insisted upon appearing pro se he would be held to the same standards of procedure as would an attorney’....” The Appellate Division did not explicitly address his claims concerning the prosecutor’s use of his phone calls from jail to his witnesses, saying only that his “remaining contentions ... are partially unpreserved for appellate review, and, in any event, without merit.”

Dixon argues that the trial court erred in permitting him to proceed pro se because “(1) his request to do so was, by the court’s own admission, ‘equivocal’ and had been conditioned upon the refusal to assign him new counsel, and (2) he was not warned of the ‘dangers’ of proceeding pro se.... [I]ndeed, the court neither explained appellant’s 641 charges nor his multi-decade sentencing exposure.” Regarding his recorded phone calls from jail, Dixon says, “The prosecutor violated appellant’s Sixth Amendment right to present a defense by monitoring his pro se witness preparation calls and repeatedly using them throughout trial to gain a tactical advantage.... The prosecutor’s decision to actively seek out a pro se defendant’s witness preparation calls, listen to the calls without having the court or a ‘taint team’ first screen them, and weaponize the calls to obtain a tactical advantage at trial has never been sanctioned by this Court – or any other court nationwide.”

For appellant Dixon: David Fitzmaurice, Manhattan (212) 693-0085 ext. 222

For respondent: Queens Assistant District Attorney Danielle S. Fenn (718) 286-5838

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No. 76 Szypula v Szypula

The primary question in this matrimonial action is whether pension credits earned prior to a marriage, but acquired during the marriage with marital funds, are marital property subject to equitable distribution. When John and Meredith Szypula married in 1996, the husband had served nearly nine years in the U.S. Navy. Roughly two years later he left the Navy for private employment without ever joining the Navy's pension plan. In 2012, he joined the U.S. State Department as a foreign service officer, was automatically enrolled in the Foreign Service Pension System, and was given the opportunity to buy back the 11 years of pension credit he had earned in the Navy. The couple opted to purchase the Navy service credits, which was accomplished through deductions from the husband's paychecks over the next six years. The wife sued for divorce in 2019, after the cost of the Navy pension buy-back was fully paid. In settlement negotiations, the parties did not agree on whether the Navy pension benefits were a marital asset or the husband's separate property.

Supreme Court ruled the entire 11 years of Navy pension credits were marital property and ordered equitable distribution, citing the Appellate Division, Second Department's 2019 decision in Burke v Burke (175 AD3d 458). Supreme Court said the husband "received some pension benefits from his service" in the Navy prior to the marriage. "However, at no time during his service, before or after the marriage, did he obtain vested benefits.... [T]he parties, during the course of their marriage, used marital funds to buy back Husband's US NAVY pension benefits to enhance his entire retirement benefits. Consequently, the choice of how the parties chose to use those marital funds in the concept of their economic partnership will not be disrupted."

The Appellate Division, Third Department modified by reversing the determination that nine years of Navy pension credits earned prior to the marriage were marital property. It said whether a pension is marital property "is determined by the time period in which the credit for the pension was earned.... The time rules applicable to pension plans ... reflect compensation to the titled spouse for past services. As such, compensation for past services earned prior to the marriage is separate property. The nine years of premarriage Navy credits were earned outside the marriage and are based on the fruit of the [husband's] sole labors" and "they are not due in any way to the indirect contributions of the [wife]." The court said, "The acquisition of the separate pension credits cannot serve to transform such property into a marital asset." However, it said the marital funds used to purchase the Navy credits for 1987 to 1996 are subject to equitable distribution and it directed Supreme Court on remittal to order payment of half of that cost to the wife, a total of \$3,525.

Meredith Szypula, citing Burke, argues the Navy pension is marital property because her husband had no vested right to the pension, or even to buy back the pension credits, until he joined the State Department during the marriage and purchased the pension credits with marital funds. She says "the correct inquiry with respect to retirement benefits is not necessarily when the service occurred but rather when the right to ... the thing of value" was actually acquired.

For appellant Meredith Szypula: R. James Miller, Ithaca (607) 273-4200

For respondent John Szypula: Emily Barnet, Manhattan (212) 230-8868