State of New York
Court of Appeals

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NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

October 15 thru October 17, 2024

State of New York
Court of Appeals

To be argued Tuesday, October 15, 2024

No. 126 Matter of Amedure v State of New York

Republican and Conservative Party officials and organizations are challenging the constitutionality of Election Law amendments enacted in 2021 to expedite the counting of absentee and other ballots cast by mail. The challenge is focused on section 9-209(2)(g), which provides that when a bipartisan board of elections "splits as to whether a ballot is valid, it shall prepare such ballot to be cast and canvassed...," essentially requiring disputes over the validity of the signature on a ballot envelope to be resolved in favor of the voter. The plaintiffs contend the provision violates Article II, section 8 of the State Constitution, which says all laws "affecting boards or officers charged with the duty of qualifying voters..., or of receiving, recording or counting votes at elections, shall secure equal representation of the two [major] political parties."

Supreme Court declared Election Law § 9-209(2)(g) unconstitutional under article II, section 8. "The Constitution requires bipartisan action, not simply bipartisan representation, when qualifying voters *and* when canvassing and counting votes. The meaning of bipartisan action requires that any decisions ...must be made by majority vote" and, if "there are only two commissioners, requires a unanimous vote," the court said. Under the amendment, "There is no bipartisan action, no ability to preserve the objection, and no ability to seek judicial review."

The Appellate Division, Third Department reversed on a 3-2 vote and declared the statute constitutional, saying "there is no justification for departing from [the Constitution's] literal language to hold that 'equal representation' must mean 'bipartisan action' when counting votes – i.e., that representatives of the two political parties must be forced to agree as to the authenticity of the signature on a ballot envelope duly issued to a qualified, registered voter for that ballot to be counted. All that the Constitution requires in this respect is 'equality of representation to the two majority political parties *on all such boards* and nothing more'.... It must also be emphasized that Election Law § 9-209(2)(g) does not go beyond those matters that are within the constitutional power of the Legislature to control. Courts have long recognized the power of the Legislature to prescribe the method of conducting elections...." It concluded, "[T]he legislative decision to preclude judicial challenges to timely-received, sealed ballots duly issued to qualified, registered voters found to be authentic by at least one election official – in order to ensure all valid votes are counted ...–does not unconstitutionally intrude upon the judiciary's powers."

The dissenters said the amendment "has the potential to inhibit the rights of New Yorkers to cast their ballot by preventing objections to a ballot cast by someone else in their name." They argued, "Election Law § 9-209(2)(g), as recently amended, upended the longstanding expectation that there would be bipartisan agreement – and not just consultation – in resolving certain challenges to absentee ballots, creating a presumption that the ballot is valid even if there is dispute between election officials as to whether, most importantly, the signature on the ballot envelope matches that of the person who purportedly cast it. The ballot is then counted in a way that prevents any possibility of judicial review to resolve those concerns." The Constitution "requires bipartisan agreement if election officials are required to decide whether a challenged ballot is valid, and Election Law § 9-209(2)(g) conflicts with that requirement by creating a presumption that a challenged ballot is valid in the event of a deadlock."

For appellants Amedure et al: Adam Fusco, Albany (518) 620-3920
For appellant minority leaders: Paul DerOhannesian, Albany (518) 465-6420
For respondent State: Assistant Solicitor General Sarah L. Rosenbluth (716) 853-8407
For respondent State Senate: Benjamin F. Neidl, Troy (518) 274-5820
For respondent Assembly: Christopher Massaroni, Albany (518) 465-2333

State of New York
Court of Appeals

To be argued Tuesday, October 15, 2024

No. 90 Wu v Uber Technologies, Inc.

This negligence action against Uber Technologies arose in July 2020, when Emily Wu hailed an Uber driver using the company's "rider app" on her cell phone. At her destination in Brooklyn, the driver stopped in the middle of the street, Wu exited the vehicle and was struck by another car. In November 2020, Wu brought this suit against Uber and others to recover for her injuries. Two months later, Wu and others received an email from Uber informing them of changes to its terms of use, including a hyperlink to "changes to the Arbitration Agreement ... and procedures and rules for filing a dispute against Uber," that would take effect on January 18, 2021. The email told them they would see a pop-up screen on the rider app, which also contained hyperlinks to the updated terms of use, and they would have to review and accept the terms before continuing to use the service. Wu clicked the consent button. Uber subsequently served a notice of intention to arbitrate her negligence claim and Wu moved to stay arbitration.

Supreme Court denied Wu's motion and granted Uber's cross-motion to compel arbitration, ruling that Wu received adequate notice of the updated terms of use and validly consented to them. It rejected her claim that Uber violated the Rules of Professional Conduct by sending her the updated terms of use without notice to counsel representing her in the suit.

The Appellate Division, First Department affirmed, saying, "The court correctly determined that an agreement to arbitrate existed between plaintiff and Uber.... Uber established, prima facie, the existence of that agreement by submitting evidence showing that plaintiff electronically signed its ... updated terms of use..., which included an arbitration agreement, by clicking a checkbox and button that confirmed that she reviewed and consented to the terms...." It said "Supreme Court providently exercised its discretion in declining to sanction Uber and its employees for the sending of mass communications that were received by plaintiff directly during the pendency of the action."

Wu argues, in part, that she did not agree to arbitrate her lawsuit because this case does not "involve a 'normal' arbitration clause governing the parties' future dealings. It involved a retroactive one purporting to funnel an existing lawsuit filed in the forum chosen by the plaintiff into one preferred by the defendant. A typical litigant would have expected such a communication to be directed to her counsel, not to her directly through a dialogue box in an app. The clause was so plainly beyond the expectations of a reasonable consumer that, particularly in the absence of clear notice, she cannot be said to have assented to it." She also says, "The Attorney Rules of Professional Conduct prohibit contact with represented parties like Emily Wu and Uber's flagrant violation of that obligation here to obtain a jury trial waiver in a pending action should not be rewarded."

For appellant Wu: Joshua D. Kelner, Manhattan (212) 425-0700
For respondent Uber: Michael R. Huston, Manhattan (212) 262-6900

State of New York
Court of Appeals

To be argued Tuesday, October 15, 2024

No. 92 Knight v Dewitt Rehabilitation and Nursing Center, Inc.

After 89-year-old Pamela Knight fell and broke her hip in January 2019, she was treated at three medical facilities in Manhattan, including Dewitt Rehabilitation and Nursing Center. She died in August 2019. Two years later James Knight, her son and administrator of her estate, brought this negligence action against all three medical facilities in Manhattan Supreme Court.

Dewitt moved to transfer the entire action to Supreme Court in Nassau County based on forum selection clauses in two of its admission agreements, which the decedent allegedly executed with Docusign signatures. Dewitt submitted an affidavit of its Director of Admissions, who had no recollection of decedent, but said it was Dewitt's custom and practice to have a staff member review each page of the admissions paperwork with patients and witness their signatures. She said a staffer's signature on decedent's admission agreements confirmed that he witnessed decedent sign them by Docusign, but Dewitt did not submit an affidavit from the staffer. Knight argued that Dewitt failed to establish that decedent executed the agreements. He submitted an affidavit and an exemplar of decedent's signature, asserting that the Docusign signatures on the agreements did not match his mother's and did not match each other.

Supreme Court granted the motion to change venue to Nassau County. It said Dewitt "has met its burden of showing that the choice of venue provision is applicable and enforceable," while Knight "provided only a bald assertion" that decedent's signatures were forgeries.

The Appellate Division, First Department reversed on a 3-2 vote, leaving venue in Manhattan. The majority said the "burden of proving the existence, terms and validity of a contract rests on the party seeking to enforce it" and Dewitt failed to meet this burden. "Here, Dewitt could have sought to establish the genuineness of decedent's electronic signature by the affidavit of someone with knowledge of the Docusign protocols and indicia of reliability, both generally and as applied to decedent's proffered signatures.... Dewitt did not do this. Since Dewitt has not at this juncture established that any valid contract was made with decedent, the forum selection clause contained in the admission agreements does not come into play."

The dissenters said the "burden here is on plaintiff, as the challenging party, to demonstrate why the forum selection clause should not be enforced.... Plaintiff's affidavit purporting to demonstrate that the signature and initials on the admission agreement do not belong to decedent is insufficient to demonstrate that enforcement of the forum selection clause was unreasonable, unjust, or in contravention of public policy, or that the clause was the result of fraud or overreaching." They also said "the burden is on the person alleging a forgery to establish that a contract was indeed forged.... Here, plaintiff did not identify the document from which the exemplar of decedent's signature was extracted or the date when that document was signed. Plaintiff also failed to present any expert affidavit on the alleged inauthenticity of decedent's signature."

For appellant Dewitt: William T. O'Connell, White Plains (914) 798-5465
For respondent Knight: Andrew D. Leftt, Manhattan (212) 256-1755

State of New York
Court of Appeals

To be argued Tuesday, October 15, 2024

No. 94 People v Tyrone Peters

Tyrone Peters was convicted of first-degree murder for fatally shooting Winston Williams in Brooklyn in 2003, days after Williams testified against him at a grand jury proceeding in a weapon possession case. Peters was sentenced to life without parole.

On appeal to the Appellate Division, Second Department, Peters was provided appointed counsel from Appellate Advocates, who began drafting a brief. A short time later, in August 2004, Peters hired Barry Krinsky as his appellate counsel using what he said was a $20,000 retainer from his mother. Peters sent Krinsky his appointed counsel's partial draft of an appellate brief along with drafts Peters had written containing his own legal research. The attorney-client relationship deteriorated, allegedly due to Krinsky's failure to communicate with Peters about the appeal, and Peters filed a complaint against Krinsky with the departmental Grievance Committee in May 2011, seven years after his conviction. The Grievance Committee dismissed the complaint in 2012, and Krinsky then submitted a brief to the Second Department. The brief was 135 pages long, but Peters says it consisted of a partial copy of his appointed counsel's initial draft and verbatim portions of Peters' own draft. He claims Krinsky wrote none of it. The Second Department affirmed his conviction in August 2012.

Peters, acting pro se, petitioned for a writ of error coram nobis to vacate the affirmance on the ground that he was denied the effective assistance of appellate counsel. He said the representation he was provided on appeal "was so nominal it amounted to the substantial equivalent of being assigned no counsel at all," or, "If the assistance of appellate counsel was something more than nominal, it still did not reach a level of performance sufficient to satisfy an objective standard of reasonableness." The Second Department denied his petition in a brief order saying, "The appellant has failed to establish that he was denied the effective assistance of appellate counsel."

Peters argues that he "met his burden under both the more lenient New York standard and the narrower federal Constitution standard, both of which guarantee the right to effective appellate representation. The prosecution argues that Peters "had meaningful representation on his direct appeal to the Appellate Division.... That appellate counsel did not raise any successful claims was not because counsel was ineffective, but rather because there were none that could have been raised."

For appellant Peters: Eric Nelson, Staten Island (718) 356-0566
For respondent: Brooklyn Assistant District Attorney Solomon Neubort (718) 250-2514

State of New York
Court of Appeals

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To be argued Tuesday, October 15, 2024

No. 104 Ruisech v Structure Tone Inc.

Felipe Ruisech was injured in 2011 while working on a renovation of the 19th floor of 200 Park Avenue in Manhattan. He was installing a 500-pound glass wall panel into an aluminum track that had been cut into the concrete floor when he slipped on small pebbles of concrete debris, allegedly injuring his back. Ruisech and his wife brought this personal injury action against building owner 200 Park LP and manager Tishman Speyer Properties; CBRE Inc., which leased the floor and contracted for the renovation; and general contractor Structure Tone Inc. Ruisech's employer, A-Val Architectural Metal, was brought in as a third-party defendant.

Ruisech asserted an array of claims including violation of Labor Law § 241(6) predicated on an alleged breach of Industrial Code § 23-1.7(e)(2), which provides, "The parts of floors, platforms and similar areas where persons work or pass shall be kept free from accumulations of dirt and debris and from scattered tools and materials and from sharp projections insofar as may be consistent with the work being performed." The Labor Law imposes a nondelegable duty on owners and contractors to comply, but under case law the code provision does not apply when the material that causes an injury "was an integral part of the construction." The defendants moved for summary judgment dismissing the claim, contending the concrete debris that caused Ruisech to slip was created by and an integral part of his work.

Supreme Court denied the motions by CBRE, Park and Structure Tone, finding Ruisech had a valid Labor Law claim based on the alleged violation of Industrial Code § 23-1.7(e)(2) because "the pebbles were not integral to plaintiff's work at the job site as the track for the glass plaintiff was handling had already been completed." The court also ruled that issues of fact precluded summary judgment. "Plaintiff testified that the pebbles were made out of the cement from the flooring, another A-Val team performed that work, and that he had never done that work.... There are questions of fact as to whether section 23-1.7(e)(2) was violated and was a proximate cause of plaintiff's accident."

The Appellate Division, First Department modified by dismissing the plaintiffs' remaining claims. It said section 23-1.7(e)(2) did not apply to the accident because "the pebbles were debris that were an integral part of the construction work. The integral to the work defense applies to things and conditions that are an integral part of the construction, not just to the specific task a plaintiff may be performing at the time of the accident...."

The plaintiffs argue the Appellate Division ruling "extends the [integral-to-the-work defense] so far beyond this Court's decision [adopting the defense] that it subsumes the regulations entirely." The defendants argue, in part, that the plaintiffs' motion for leave to appeal to this Court was untimely.

For appellants Ruisech: John Lavelle, Williston Park (516) 875-3000
For respondent Structure Tone: Willim D. Joyce III, Manhattan (212) 313-3600
For respondent CBRE: C. Briggs Johnson, Manhattan (212) 683-7100
For respondents Tishman Speyer and Park: Louise M. Cherkis, Manhattan (212) 964-7400
For respondent A-Val: Danny C. Lallis, White Plains (914) 287-7711

State of New York
Court of Appeals

To be argued Wednesday, October 16, 2024

No. 95 Farage v Associated Insurance Management Corp.

In August 2014, a Staten Island apartment building owned by Regina Farage was severely damaged by fire. Six years later, Farage brought this breach of contract action against her property insurers, Tower Insurance Company of New York and related companies, and her insurance brokers. She alleged that the Tower defendants had refused to pay repair costs for the building in the six years following the fire, causing substantial delay of the reconstruction work.

The Tower defendants moved to dismiss the suit, contending the action was barred by a two-year contractual limitation period in the insurance policy. The policy provision states, "No one may bring a legal action against us under this insurance unless: [a] There has been full compliance with all of the terms of this insurance; and [b] The action is brought within 2 years after the date on which the direct physical loss or damage occurred."

In response, Farage cited another policy provision which said Tower would not "pay on a replacement cost basis for any loss or damage ... Until the lost or damaged property is actually repaired or replaced...." She relied on Executive Plaza, LLC v Peerless Ins. Co. (22 NY3d 511), a case like this one involving a fire damaged building and a two-year policy limitation for legal claims, in which the Court ruled that the "contractual limitation period, applied to a case in which the property cannot reasonably be replaced in two years, is unreasonable and unenforceable." Therefore, Farage argued, the limitation period in her case could not be enforced because her building could not be repaired in two years.

Supreme Court granted Tower's motion to dismiss the suit as untimely because Farage filed it four years after the limitation period expired. The Appellate Division, First Department affirmed, saying Executive Plaza "is distinguishable, as plaintiff here failed to allege that she reasonably attempted to repair the property within the two-year limitations period but was unable to do so...."

For appellant Farage: Matthew C. Hug, Albany (518) 283-3288
For insurer respondents Tower Insurance et al: Kevin F. Buckley, Manhattan (212) 804-4200
For broker respondents Bowman et al: Howard S. Kronberg, White Plains (914) 948-7000

State of New York
Court of Appeals

To be argued Wednesday, October 16, 2024

No. 96 People v Brandon Williams

Brandon Williams and his cousin Neon Osouna were charged with murdering Donald Reed in December 2019 outside a Queens nightclub, The Smoke Shop Lounge, that was owned by Osouna. Reed had visited the club in the early morning hours with his sister and his girlfriend. When the women left about three hours later, Reed robbed the club's doorman at gunpoint and followed them out. Surveillance video of the street outside shows Osouna and another man, whose head is obscured by a hoodie, chase after Reed and fatally shoot him.

Osouna gave a videotaped statement in which he incriminated himself and explained that Reed had robbed the club's doorman, but he refused to name the second shooter. Williams was arrested based on identifications by Reed's sister and girlfriend, who did not witness the shooting but told police Williams had been the doorman that night and was the man wearing the hoodie in the surveillance video. They also identified Williams as the second shooter at trial, saying they had visited The Smoke Shop Lounge often and were familiar with his appearance.

Williams moved to sever his trial from Osouna's and moved to preclude Osouna's videotaped statement, saying its admission would violate his right to confront and cross-examine witnesses against him. The trial court denied both motions, saying the statement "does not expressly implicate defendant Williams," and it failed to give the jury a limiting instruction that Osouna's confession should be considered only as evidence of his own guilt. The prosecutor emphasized in her opening and closing statements that Osouna's videotape corroborated the identifications by Reed's sister and girlfriend. Williams was convicted of second-degree murder and weapon possession. He was sentenced to 25 years to life in prison.

The Appellate Division, Second Department affirmed. It said the admission of Osouna's confession without a limiting instruction violated Williams' right to confrontation. "Although Osouna did not specifically name the defendant..., 'the jury could have easily inferred' that the defendant was the person who was robbed.... Indeed, the prosecutor encouraged that interpretation of Osouna's confession, informing the jury during opening statement that 'you will hear the victim ... robbed one of his people, so instead of calling the police, *these two defendants* decided that Donald Reed had to die and they meted out their own version of street justice'.... Further, Osouna's confession supplied the only evidence of motive to shoot [Reed], and linked that motive to the defendant as the individual who was robbed by [Reed] shortly before the shooting." However, the court said "the error was harmless in light of the overwhelming evidence of the defendant's guilt ... and since there is no reasonable possibility that the improperly admitted confession contributed to the defendant's convictions."

Williams argues that the admission without limiting instructions of Osouna's "unredacted, incriminating confession, freely employed by the prosecution in framing its case, completely denied appellant his fundamental right to confront the witnesses against him and warrants a per se reversal," not subject to harmless error analysis. Alternatively, he says the error was not harmless because the only other evidence of guilt was the indirect identification by two witnesses who did not see the shooting.

For defendant Williams: Steven R. Berko, Manhattan (917) 581-2729
For respondent: Queens Assistant District Attorney Christopher Blira-Koessler (718) 286-5988

State of New York
Court of Appeals

To be argued Wednesday, October 16, 2024

No. 97 People v Eddie Robles

In June 2018, two Syracuse police officers received a report of shots fired at an intersection in the city. One of them reviewed video recordings from police cameras in the area, which showed a Black man with a thin build, wearing dark clothing and a red bandana, walking a yellow dog on a pink leash. The recordings showed that man had been in an altercation with two men, who knocked him to the ground, and as he fled he raised his arm and appeared to fire a handgun at them. About two hours later and a few blocks from the site of the shooting, the officers saw Eddie Robles, who partially matched the suspect in the video, walking a yellow Labrador on a pink leash. The officers approached him and, after a struggle, recovered a gun from his waistband and handcuffed him. When an officer asked Robles without Miranda warnings "what's going on? Are you all right? Are you okay?" Robles responded "you saw what I had on me. I was going to do what I had to do."

Supreme Court denied Robles' motion to suppress the gun and his statement to police, finding the officers had reasonable suspicion to detain him and his statement was "not the product of interrogation." Robles, acting pro se, ultimately pled guilty to attempted criminal possession of a weapon in the second degree in exchange for a two-year prison sentence.

The Appellate Division, Fourth Department affirmed in a 4-1 decision. It said the lower court properly refused to suppress the handgun, but "should have suppressed the statement defendant made in response to the officer's questions inasmuch as defendant was in custody at the time but had not waived his Miranda rights." However, the majority further found that "the particular circumstances of this case permit the rare application of the harmless error rule to defendant's guilty plea." Because the handgun found in Robles' waistband "would have been admissible at trial, we conclude that there is no reasonable possibility that the court's error in failing to suppress defendant's statement admitting possession of the firearm contributed to his decision to plead guilty."

The dissenter said the failure to suppress Robles' statement was not "'harmless beyond a reasonable doubt'.... Here, the People do not argue that harmless error analysis applies, and defendant failed to articulate a reason for his plea that is independent of the erroneous suppression ruling.... [T]his is not one of those rare cases in which the defendant said something on the record from which we can conclude that he would have pleaded guilty without regard to the error...."

For appellant Robles: Melissa K. Swartz, Syracuse (315) 424-8326
For respondent: Onondaga County Sr. Asst. District Attorney Bradley W. Oastler (315) 435-2470

State of New York
Court of Appeals

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To be argued Wednesday, October 16, 2024

No. 99 Matter of Kasowitz, Benson, Torres & Friedman v JPMorgan Chase Bank

In this turnover proceeding, JPMorgan Chase Bank and The Dakota dispute whose lien has priority over the proceeds of the sale of Alphonse Fletcher's shares in two apartments in The Dakota, a residential cooperative in Manhattan. When Fletcher acquired the apartments in 2001, paragraph 15 of the lease required him to reimburse The Dakota for all expenses it might incur in litigation between the two. Fletcher subsequently sued The Dakota for refusing to consent to his purchase of an additional apartment. Supreme Court ultimately dismissed Fletcher's claims and, in 2017, awarded The Dakota a $3.1 million judgment for its legal expenses.

Meanwhile, in 2008, Fletcher assigned to Chase his right, title and interest in his lease and shares in The Dakota apartments as security for loans totaling $11,250,000. And in 2015, Kasowitz, Benson, Torres & Friedman commenced this special proceeding against Chase, The Dakota, and Fletcher to enforce a $2.8 million judgment it had obtained against Fletcher for unpaid legal fees. The law firm sought an order for the sale of Fletcher's lease, and it subsequently assigned its judgment against Fletcher to Chase. Fletcher defaulted in the proceeding. A receiver realized $9.3 million in net proceeds from the sale of Fletcher's shares and lease, less than the total value of The Dakota's and Chase's liens.

The Dakota contended that its interest in its $3.1 million award for legal fees in the 2017 judgment against Fletcher was superior to Chase's interest in the proceeds. Chase argued, in part, that the 2017 judgment was based on a misinterpretation of the attorneys' fee provision in paragraph 15 of the lease and that the provision was unconscionable. It said its claims were reviewable because it was not a party to that action nor in privity with Fletcher, so the 2017 judgment had no collateral estoppel effect on it; and it said the Dakota should have sought to join Chase in that action if it wanted Chase to be bound by the judgment. The Dakota argued that Chase would have had to intervene in the Fletcher action in order to challenge the 2017 legal fees judgment as improper under paragraph 15 of the lease.

Supreme Court granted The Dakota's motion for summary judgment, declaring that its lien on the apartment sale proceeds was superior to Chase's lien as a lender to Fletcher and as assignee of the law firm's lien.

The Appellate Division, First Department affirmed, saying Chase's claims that The Dakota's 2017 judgment for legal fees was improperly based on a misreading of the lease and was unconscionable "is an impermissible collateral attack on the Dakota's judgment" and "would destroy the judgment altogether.... If Chase wants to vacate the Dakota's judgment, it must move before '[t]he court which rendered [the] judgment'" pursuant to CPLR 5015. The court said, "As Fletcher's assignee, Chase could have sought to intervene in this action against the Dakota to argue that paragraph 15th was invalid...."

For appellant JPMorgan Chase: Alan E. Schoenfeld, Manhattan (212) 230-8800
For respondent The Dakota: John Van Der Tuin, Manhattan (212) 907-9700

State of New York
Court of Appeals

To be argued Thursday, October 17, 2024

No. 91 Matter of McCabe v 511 West 232nd Owners Corp.

Maryann McCabe lived with David Burrows in an apartment at 511 West 232nd Owners Corp., a residential cooperative in the Bronx, from 2006 until Burrows died in 2019. Burrows owned the shares and lease for the apartment, which he bequeathed to his "friend" McCabe in his will. The lease provided, "If the Lessee shall die, consent shall not be unreasonably withheld or delayed to an assignment of the lease and shares to a financially responsible member of the Lessee's family (other than the Lessee's spouse as to whom no consent is required)." In 2020, McCabe asked the Cooperative to transfer the shares in the apartment to her pursuant to the lease and Burrows' will, saying she was entitled to an automatic transfer as Burrows' "partner for over 25 years." The Cooperative replied that McCabe had not demonstrated that she was a family member or spouse of Burrows and, thus, would have to vacate the unit or apply to purchase the unit shares. The Cooperative ultimately denied her application to purchase the shares.

McCabe filed this suit against the Cooperative to compel it to transfer the apartment to her, arguing she was entitled to an automatic transfer under the lease because she was "the equivalent of Mr. Burrows' spouse" as his "long time romantic partner." She also alleged the Cooperative had discriminated against her based on marital status in violation of the New York City Human Rights Law (HRL) and the State HRL. The Cooperative replied that it was not required to treat McCabe as a spouse because she was not legally married to Burrows. Even if she were a "non-traditional family member," it said it permissibly denied her application to transfer the assets because she did not demonstrate that she was "financially responsible."

Supreme Court dismissed the suit. McCabe "did not meet her burden of demonstrating a prima facie case of discrimination based upon marital status because eligibility for the cooperative apartment 'does not turn on the marital status' of the individual," it said, citing Levin v Yeshiva Univ. (96 NY2d 484 [2001]). This distinction being that here, the issue faced by [McCabe] arises not because she was unmarried, but because the lease restricts transfer or assignment on the lease without Board approval unless it is to spouses; [the Cooperative] did not refuse her based on discrimination against her marital status...."

The Appellate Division, First Department affirmed, saying, "The cooperative legitimately applied the terms ... of the proprietary lease to find that [McCabe] was not the decedent's spouse and therefore required approval by the board prior to transfer of the proprietary lease and shares of the subject unit.... Furthermore, based on [McCabe's] tax returns and financial information provided on her application to transfer such shares, the cooperative offered a legitimate, nondiscriminatory reason for denying its approval...."

McCabe argues that the Cooperative's failure to recognize her relationship with Burrows as the "equivalent" of a spouse and transfer the apartment to her violated the prohibition against marital status discrimination in the City HRL. She says the lower courts erred in relying on Levin, which was decided before the City adopted amendments in 2005 and 2016 providing that its HRL "shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof," regardless of how the State HRL and federal laws have been construed.

For appellant McCabe: Yoram Silagy, Manhattan (212) 949-7300
For respondent Cooperative: Michelle P. Quinn, Manhattan (212) 935-3131

State of New York
Court of Appeals

To be argued Thursday, October 17, 2024

No. 100 Matter of Ibhawa v New York State Division of Human Rights

Victor O. Ibhawa, a Nigerian Catholic priest studying for his master's degree, was hired by the Diocese of Buffalo in 2016 to serve as a parish administrator and pastor at the Blessed Trinity Church in Buffalo. In January 2019, the Diocese reappointed him for an additional three-year term, but terminated him prematurely in September 2020.

Ibhawa, who is Black, filed a racial discrimination complaint with the State Division of Human Rights (SDHR), asserting claims against the Diocese for wrongful termination and hostile work environment. He alleged that he had been subjected to racial slurs and xenophobic harassment by parishioners and coworkers. When he reported these incidents to officials of the Diocese, he said they failed to investigate and, instead, criticized him for deciding to fire two coworkers who were involved in the incidents. He said the Diocese offered him a plane ticket to Nigeria and, when he declined, fired him "without explanation." The Diocese argued that SDHR lacked jurisdiction due to the "ministerial exception," a First Amendment doctrine that precludes employment discrimination claims by ministers against religious employers.

SDHR dismissed the complaint for lack of jurisdiction. "The ministerial exception grants a church/religion the right to choose (or terminate) ministers or persons who serve in a similar religious role without governmental interference, including discrimination claims."

Supreme Court upheld dismissal of the retaliatory firing claim, but reinstated the claim for hostile work environment. It said the ministerial exception barred Ibhawa's claims "arising from ... tangible employment actions such as hiring and firing and claims relating to conduct for which the [Diocese] proffers a religious reason." However, because neither state nor federal courts have ruled the exception bars hostile work environment claims, it said SDHR's decision "was affected by an error of law and the absence of controlling authority does not constitute a rational basis to determine that the ministerial exception barred review" of Ibhawa's claim.

The Appellate Division, Fourth Department reversed and dismissed the suit, holding that the court applied an incorrect standard of review and "failed to give the requisite deference to SDHR's determination.... Inasmuch as there is no controlling United States Supreme Court or New York precedent ... on the extent to which the ministerial exception applies to claims of hostile work environment..., we conclude that SDHR's determination with respect to the hostile work environment claim is not arbitrary and capricious or affected by an error of law."

Ibhawa argues the ministerial exception "is not a jurisdictional bar to NYSDHR's mandate to investigate ... hostile work environment claims by a minister" and the agency "should not be permitted to abdicate its statutory duty." "A claim of discriminatory harassment within the workplace is separate and distinct from the religious mission of the church," he says, and the state "has a compelling interest in safeguarding all its residents from the harmful effects of discrimination and workplace hostility based on race.... Hostile work environment claims by ministerial employees can co-exist with robust religious freedom and respect for the First Amendment rights of religious organizations."

For appellant Ibhawa: Donna A. Milling, Buffalo (716) 830-0204
For respondent SDHR: Aaron M. Woskoff, Bronx (718) 741-8398
For respondent Diocese: Kathleen H. McGraw and Erin S. Torcello, Buffalo (716) 416-7000

State of New York
Court of Appeals

To be argued Thursday, October 17, 2024

No. 101 People v Timothy Shader

In 1977, Timothy Shader was convicted of first-degree rape, sodomy and other crimes in Albany County for breaking into a woman's house and forcibly raping her. He was sentenced to 8⅓ to 30 years in prison. When he was released on parole in 1998, Shader was designated a risk level three sex offender, the highest risk level under the Sex Offender Registration Act (SORA), based primarily on the seriousness of his offense and his criminal history, which began in 1970 at age 14 when he was found to be a juvenile delinquent after an arrest for first-degree sexual abuse. In 1973, he was found guilty of sexual misconduct and given a year of probation as a youthful offender. And in 1974, he was convicted of first-degree attempted rape for assaulting a young women and was sentenced to four years in prison as a youthful offender.

In 2021, at the age of 66, Shader filed a petition under Correction Law § 168-o to reduce his SORA risk classification from level three to level one. In support, he said he had committed no sex offenses for more than 40 years, successfully completed sex offender treatment and 10 years of parole supervision, and complied with his SORA registration requirements. He argued that his risk of recidivism was reduced in view of his age, education, steady employment, and his marriage and stable home life. The Board of Examiners of Sex Offenders did not oppose his modification to level one, saying Shader "has turned his life around and has been living a prosocial life in the community." The Board said, "Most importantly," Shader "acknowledges the harm he caused the victim of the instant offense and expresses remorse for his actions."

Supreme Court reclassified Shader a level two offender, but said it was "unpersuaded that the defendant has proven by clear and convincing evidence that he is so less likely to offend to warrant a level 1 designation. Although he has not been arrested for any new sex crimes, such a factor is far outweighed by the seriousness of his conviction, which involved breaking into a woman's home, assaulting, and raping her. Furthermore, the defendant has a long history of sexual offenses.... The court also notes that in 2003, while on parole for the instant offense, he was convicted of Attempted Auto Stripping in the Third Degree and Attempted Possession of Burglary Tools, both misdemeanor offenses."

The Appellate Division, Third Department affirmed, saying, "Upon review, no abuse of discretion exists in the court's reclassification of defendant to a risk level two sex offender...."

Shader argues that he presented "overwhelming evidence of his low risk of sexual re-offense" and that the lower courts abused their discretion by giving undue weight to the seriousness of his 1977 rape conviction, his prior sex offenses, and his 2003 misdemeanor convictions, which were not sexual in nature. He says the focus of those courts "on his decades-old criminal history," which cannot be undone, undermines the purposes of the risk level modification procedure in Correction Law § 168-o(2) by suggesting "that Mr. Shader can never be rehabilitated."

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State of New York
Court of Appeals

To be argued Thursday, October 17, 2024

No. 102 People v Jairo Castillo

Jairo Castillo fatally shot Julio Lebron inside a Bronx hair salon in August 2016. Lebron had been in a physical altercation with the salon owner earlier in the day, He returned several hours later threatening the people inside, then entered the small shop and blocked its only outside door. The prosecution's eyewitness said Lebron, while blocking the door, faced Castillo and said, "What are you going to do now? You're not getting out of here." He then held a razor blade to Castillo's face and said he would "cut the man from ear to ear." Castillo stepped back, pulled out a gun and began firing, striking Lebron in the chest and left arm. As Lebron "spun" around, Castillo continued firing, striking Lebron four times in the back. An autopsy found three of the six gunshot wounds – one in the chest and two in the back – would have been fatal.

At trial, Castillo claimed he acted in self defense and asked Supreme Court to instruct the jury on justification. The court refused, saying, "Having reviewed the testimony, including the photographs, including the razor blade and reviewing the relative sizes and ages, descriptions of the two parties involved, allegedly, I don't think it's an appropriate charge to give...."

After eight days of deliberations, the jury convicted Castillo of second-degree murder and criminal possession of a weapon. He was sentenced to 15 years to life in prison.

The Appellate Division, First Department affirmed. "The court correctly declined to charge justification because there was no reasonable view of the evidence, viewed most favorably to defendant, to support that defense...," it said. "It is undisputed that the victim was the initial aggressor, who held a razor blade near defendant's face and threatened to cut him. However, defendant stepped back, and the victim did not cut him. To the extent that defendant may have been justified in firing one or two shots, the victim turned around after those initial shots, and there was no reasonable view of the evidence, including the autopsy evidence, that defendant, firing from a few feet away, was justified in firing four additional shots into the victim's back, causing his death."

Castillo argues that this "was a classic self-defense case" and the jury should have been instructed on the defense of justification, which the prosecution would have had the burden to disprove. "There was a reasonable – in fact powerful – view of the evidence that Mr. Castillo used deadly force to prevent Lebron from slicing him from "ear to ear" with a razor blade" and "the fact that [Lebron] spun in the midst of a rapid and continuous shooting did not nullify a reasonable view that the subsequent shots were justified." He argues that it was for a jury to determine whether Lebron's "quick spin" after the first two shots meant the threat had abated and, if so, for the jury to decide whether "in the heat of this fast-paced and deadly encounter" Castillo "had sufficient time to react." He says the lower courts "unfairly, and unlawfully, stripped that classic factual question from the jury."

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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 Thursday, October 17, 2024

No. 103 People v David Vaughn

David Vaughn and an accomplice, who acted as a lookout, were charged with committing a gunpoint robbery of a wholesale warehouse in Brooklyn in May 2016, allegedly stealing about $3,000 in cash from the business owners Wei Jiang and David Chen. Surveillance cameras inside the warehouse videotaped the robbery and showed the gunman wearing a brown sweatshirt. The victims followed the thieves down the block while on the phone with the police. They described the gunman, allegedly Vaughn, as a black man wearing a brown hooded sweatshirt and a cap, with something resembling a badge on a lanyard around his neck. Jiang said he was about 6 feet tall and "in his mid 40s," while Chen said 6 feet, 2 inches. The victims were unable to identify the perpetrators from photo arrays four days later, but when Jiang returned to the warehouse he saw two men across the street whom he suspected were the thieves. He flagged down a patrol car and when they caught up to the men, Jiang identified them as the thieves. He said Vaughn, who was 42 years old and 6 feet tall, "still has the brown sweater on." The officer arrested Vaughn and the accomplice.

Both victims identified Vaughn as the gunman at trial. The defense sought to introduce expert testimony about cross-racial identification and other factors that can affect the reliability of eyewitness identifications. Supreme Court granted the request for expert testimony only on the issue of cross-racial identification, ruling that the surveillance videos and the brown sweatshirt worn by the gunman sufficiently corroborated the victims' identification of Vaughn. The court also said jurors did not need expert testimony to explain other factors affecting eyewitness reliability "such as: Stress, weapon focus, duration of encounter, distance and lighting, disguises, memory decay [because] this is all within the k[e]n of a juror using their good common sense without the need for the opinion of an expert witness." Vaughn was convicted of first-degree robbery and second-degree burglary. He was sentenced to 20 years to life in prison.

The Appellate Division, Second Department affirmed, concluding that the trial court did not abuse its discretion in limiting the defense expert's testimony on eyewitness reliability because the prosecution "presented sufficient corroborating evidence connecting the defendant to the crime to obviate the need for the additional inquiry...."

Vaughn argues there was not enough corroborating evidence to exclude much of his requested expert testimony. "Neither of the two items of alleged corroboration upon which the trial court relied provided strong proof of identity: appellant's sweatshirt appeared to be a common and unremarkable item of clothing..., and the low-quality surveillance videos did not clearly show the robber's face or any distinguishing features." He also argues that "settled precedent demonstrates that the excluded topics were proper subjects of expert testimony beyond the ken of the average juror."

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