State of New York
Court of Appeals

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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."

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State of New York
Court of Appeals

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."

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For respondent State: Assistant Solicitor General Frederick A. Brodie (518) 776-2317

State of New York
Court of Appeals

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...."

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State of New York
Court of Appeals

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.

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State of New York
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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'...."

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