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Summarizing recent significant New York appellate cases

Do private school students outside of New York's cities have a right to transportation to and from their private schools on the days that their public schools are closed? The Court of Appeals holds that they don't, and leaves any change in that policy to the Legislature to address. Let's take a look at that opinion and what else has been happening in New York's appellate courts over the past week.

COURT OF APPEALS

EDUCATION LAW

Matter of United Jewish Community of Blooming Grove, Inc. v Washingtonville Cent. Sch. Dist., 2024 NY Slip Op 03377 (Ct App June 20, 2024)

Issue: **Does Education Law § 3635 (1) (a) require central school districts to provide transportation to nonpublic school students on days when the public schools are closed?**

Facts: The parents of nonpublic school students "requested that Washingtonville Central School District provide transportation for children attending nonpublic schools on days public schools are closed, identifying 20 such days. The District denied those requests based on its policy that '[t]he District is not required to provide transportation to nonpublic schools on days on which the District[']s schools are not in session.' That policy is consistent with guidance published by respondent State Education Department." The parents sued, and Supreme Court declared the policies invalid, concluding that "the language of Education Law § 3635 (1) (a) required the District to transport nonpublic school students on all days their schools were open and that the legislative history could not be used to counter the plain meaning of the statute." The Appellate Division, Third Department reversed, "declaring that the District is not required to provide transportation on days the public schools are closed. After determining that the language in Education Law § 3635 (1) (a) was ambiguous, that Court reviewed the provision's legislative history and held that the law 'permits, but does not require, school districts outside New York City to transport nonpublic school students to and from school on days when the public schools are closed.'"

Holding: The Court of Appeals held that Education Law § 3635 (1) (a) does not require central school districts to provide transportation to nonpublic school students on days when the public schools choose to be closed. Holding that the text of the statute was ambiguous, the Court examined the legislative history of the provision and found a 1985 amendment persuasive to indicate that central school districts were not required to provide the transportation when they are closed. In particular, the Court held, the 1985 amendment "would have required New York City to offer five alternative days of transportation to nonpublic school students and non-New York City districts to offer two alternative days of transportation" when they were closed, but the two-day requirement for non-city school district was deleted before the bill was passed. That, the Court held, "demonstrates the Legislature's intent not to require central school districts to transport nonpublic school students on days the public schools are closed." The Court thus held that it could not "introduce limitations unmoored from the text of the statute. Rather, those policy choices, with the accompanying financial consequences, must be left to the Legislature. As the law now stands, school districts outside New York City are not required to provide transportation on days that public schools are closed."

CRIMINAL LAW

People v Thomas, 2024 NY Slip Op 03319 (Ct App June 18, 2024)

Issue: **What is the proper legal standard to apply in determining whether a traffic stop was unreasonably prolonged, in violation of a criminal defendant's rights?**

Facts: "[D]efendant, who was on lifetime parole for prior narcotics offenses, was observed driving outside his county of residence by an off-duty police officer who recognized defendant's distinctive vehicle and license plate." The off-duty officer called an on-duty officer, who waited for defendant to return to the county, observed him fail to come to a complete stop at a stop sign, and then stopped defendant's vehicle as he pulled into his driveway. The on-duty officer questioned defendant about whether he was in violation of his conditions of parole, and then called defendant's parole office to report to the scene. Defendant refused to answer his parole officer's questions, and the parole officer then searched defendant's vehicle, without a warrant, and discovered 2,000 glassines of heroin. Defendant moved to suppress the evidence, arguing that "the People failed to prove that the officers had the requisite level of suspicion to extend the traffic stop after its initial basis—the traffic infraction—was exhausted, asserting that a traffic stop cannot be extended for the purpose of investigating an unrelated crime for which the officer lacked reasonable suspicion. He also argued that the parole officer's warrantless search

of his vehicle was not justified, as the parole officer was acting as an agent of the police." County Court denied the motion, holding that the initial stop was justified by the police officer's observation of the traffic infraction and that "the police had a founded suspicion of criminality justifying the continued detention of defendant in order to contact his parole officer." Defendant then pled guilty to criminal possession of a controlled substance in the third degree. The Appellate Division, Third Department affirmed, with two Justices dissenting.

Holding: The Court of Appeals used this case to reemphasize the proper legal standard to determine whether a criminal defendant's constitutional rights were violated by a prolonged traffic stop. The Court explained, "[t]he proper standard for detaining an individual beyond the time reasonably required to complete a traffic stop is reasonable suspicion. Given that a traffic stop is a limited seizure of the occupants of a vehicle, for a traffic stop to pass constitutional muster, the officer's action in stopping the vehicle must be justified at its inception and the seizure must be reasonably related in scope, including its length, to the circumstances which justified the detention in the first instance. A continued involuntary detention of a defendant constitutes a seizure in violation of their constitutional rights, unless circumstances coming to the officer's attention following the initial stop furnishes reasonable suspicion that they were engaged in criminal activity. Likewise, the United States Supreme Court has held that a seizure justified only by a police-observed traffic violation becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation. In this vein, although that mission encompasses ordinary inquiries incident to the traffic stop, it does not include additional measures designed to detect evidence of criminality. Thus, an otherwise lawful traffic stop may not be prolonged absent the reasonable suspicion ordinarily demanded to justify detaining an individual."

Here, the Court held, "there is record support for the affirmed finding that the traffic stop was justified at its inception, based upon the police officer's observation that defendant committed a traffic infraction. However, the courts below evaluated whether the traffic stop was prolonged beyond the time reasonably required for its completion under the founded suspicion standard applicable to the common law right to inquire, a lesser standard than the reasonable suspicion necessary to prolong a traffic stop. As a result, remittal is necessary to allow for consideration of this issue under the proper standard."

FIRST DEPARTMENT

LABOR LAW, TORTS, DUTY OF CARE

***Dibrino v Rockefeller Ctr. North, Inc.*, 2024 NY Slip Op 03558 (1st Dept July 02, 2024)**

Issue: **Does a subcontractor owe a duty of care to the employee of another company on a construction site after the employee fell off a ladder owned by the subcontractor?**

Facts: When conducting renovations to build Major League Baseball's new headquarters in New York City, a worker was injured when he fell off a ladder that was owned not by his employer, but by a different subcontractor on the site. In particular, although the worker used his employer's ladder and scaffolding to do the work earlier in the morning, when he was asked to reconfirm measurements, he used an open ladder that was present at the job site owned by a different subcontractor. "Plaintiff climbed up and down the ladder several times, confirming measurements, for approximately 15 minutes. He then climbed to the second or third rung of the ladder to begin measuring above his head. The ladder moved and wobbled and plaintiff lost his balance. He tried to jump off the ladder to avoid injury, but his foot became stuck in one of the rungs and he fell, causing him to sustain injuries." The worker sued the other subcontractor, among others, for common-law negligence, alleging that the "ladder was defective, and that by leaving an allegedly defective ladder unattended, [the subcontractor] created an unreasonable risk of harm that was a proximate cause of his injuries." Supreme Court denied the subcontractor's motion for summary judgment dismissing the common-law negligence claim.

Holding: The Appellate Division, First Department reversed, holding that because the subcontractor owed no duty of care to the worker, it could not be held liable for common-law negligence. The Court held, "a finding of negligence requires the breach of a duty because, in the absence of a duty, there is no breach and, without a breach, there is no liability. That is, if a defendant owes no duty to a plaintiff, there can be no liability in damages, however careless the conduct or foreseeable the harm. As to how foreseeability of harm interconnects with the imposition of a duty of care, . . . this Court explained that foreseeability should not be confused with duty and may not be relied on to create a duty. Instead, this Court held that the principle of foreseeability is applicable to determine the scope of the duty only after it has been found to exist, and that if there is no duty, then the principle is inapplicable and the foreseeability of the accident is irrelevant." Because the subcontractor did not contract with the worker or his employer, a duty could not arise out of a contract. The Court explained, "[g]enerally, a contracting party does not owe a duty of care to a noncontracting third party. There are three well-settled exceptions to this general rule: (1) where the contracting party, in failing to exercise reasonable care in the performance of his or her duties, launches a force or instrument of harm; (2) where the plaintiff detrimentally relies on the continued performance of the contracting party's duties; and (3) where the contracting party has entirely displaced the other party's duty to maintain the premises safely." The second two exceptions clearly didn't apply here, the Court held, so the only question that remained was whether the subcontractor, by leaving the open ladder on the job site, launched an instrument of harm and caused the worker's accident. The Court held that it didn't, because it did not supervise or control the worker's work, and did not give him permission to use the ladder, and thus could not be held to have a duty of care to the worker.

FOURTH DEPARTMENT

CRIMINAL LAW

People v Clark, 2024 NY Slip Op 03586 (4th Dept July 3, 2024)

Issue: **What analysis must a court undertake to determine whether a criminal conviction is against the weight of the evidence?**

Facts: Following a daylight gunpoint robbery initiated by two perpetrators against two victims sitting in a parked vehicle outside of a laundromat, defendant was charged with two counts of robbery in the first degree and two counts of robbery in the second degree. One of the victims was a key witness at trial, after she identified defendant as the perpetrator with the gun in an initial photo array, subsequent photo arrays at the police station, in a lineup, and at trial. Defendant was convicted after trial, and appealed arguing that his conviction was against the weight of the evidence.

Holding: The Fourth Department affirmed the conviction, holding that "in reviewing the evidence, we must give great deference to the jury's verdict precisely because the memory, motive, mental capacity, accuracy of observation and statement, truthfulness and other tests of the reliability of witnesses can be passed upon with greater safety by those who see and hear than by those who simply read the printed narrative. Stated another way, it is the fact-finder that has the opportunity to view the witnesses, hear the testimony and observe demeanor, and those who see and hear the witnesses can assess their credibility and reliability in a manner that is far superior to that of reviewing judges who must rely on the printed record." The Court emphasized that "[i]n determining whether a verdict is against the weight of the evidence, we must first determine whether, based on all the credible evidence, a different finding would not have been unreasonable. If so, then we must, like the trier of fact below, weigh the relative probative force of conflicting testimony and the relative strength of conflicting inferences that may be drawn from the testimony. Weight of the evidence review is not an open invitation for an appellate court to substitute its judgment for that of the jury."

Here, the Court held, "the facts of this case do not warrant the substitution of our credibility determinations for those made by the jury. We conclude that the second victim's identification of defendant was not incredible and unbelievable, that is, impossible of belief because it was manifestly untrue, physically impossible, contrary to experience, or self-contradictory. The issues of her identification of defendant and her credibility were properly considered by the jury and there is no basis for disturbing its determinations. We note that the second victim never wavered in her testimony regarding the events or her identification of defendant."

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