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CasePrepPlus

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Summarizing recent significant New York appellate cases

The Court of Appeals is back for the start of the 2026–2027 argument term. Arguments kicked off this month with the Judges of the Court hearing cases involving a number of interesting issues, including whether social media platforms could be held liable as product designers, rather than publishers of third-party racist content, for designing addictive platforms that ultimately caused an individual to commit mass murder. Let's take a closer look at the major cases the Court of Appeals will be hearing during the September term.

COURT OF APPEALS ARGUMENT PREVIEW

TORTS, FIRST AMENDMENT, SOCIAL MEDIA

***Patterson v Meta Platforms, Inc.*, 2025 NY Slip Op 04447 (4th Dept July 25, 2025)**

Issue: **May social media companies be held liable as product designers, rather than publishers of third-party racist content, for designing addictive platforms that ultimately caused an individual to commit mass murder?**

Facts: Following "the mass shooting on May 14, 2022 at a grocery store in a predominately Black neighborhood in Buffalo" that was "motivated by the Great Replacement Theory, which posits that white populations in Western countries are being deliberately replaced by non-white immigrants and people of color," survivors of the attack and family members of those killed sued, among many others, "the so-called 'social media defendants,'"—Facebook, Instagram, Snap, Alphabet, Google, YouTube, Discord, Reddit, Twitch, Amazon, and 4chan, all of whom have social media platforms that were used by the shooter at some point before or during the attack. The complaints alleged various tort claims against them, including "negligence, unjust enrichment and strict products liability based on defective design and failure to warn. According to plaintiffs, the social media platforms in question are defectively designed to include content-recommendation algorithms that fed a steady stream of racist and violent content to the shooter, who over time became motivated to kill Black people." The complaint also alleged that the algorithms, and the social media platforms themselves, are designed to be addictive and "designed to stimulate engagement by exploiting the neurological vulnerabilities of users like the shooter and thereby maximize profits."

The social media defendants moved to dismiss the complaints, arguing that they are immune from liability under section 230 of the Communications Decency Act and the First Amendment. Supreme Court denied the motions, and the social media defendants appealed.

Holding: The Fourth Department, in a 3–2 opinion surely headed next to the Court of Appeals, reversed, and dismissed the complaints insofar as asserted against the social media defendants. On appeal, the plaintiffs conceded that the abhorrent racist content consumed by the shooter on the Internet is constitutionally protected under the First Amendment, and that pursuant to section 230 and the First Amendment, the social media defendants could not be liable for publishing the racist third-party content that the shooter consumed and motivated him to commit mass murder. Plaintiffs nevertheless argued that "the social media defendants are not entitled to protection under section 230 because the complaints seek to hold them liable as product designers, not as publishers of third-party content." The Fourth Department disagreed, holding that "section 230 affords immunity to the social media defendants from plaintiffs' tort causes of action against them. In our view, a contrary ruling would be inconsistent with the language of section 230 and eviscerate the expressed purpose of the statute."

As the United States Supreme Court has held, the Internet is the most important public square in our modern digital society, and "section 30 is the scaffolding upon which the Internet is built. Enacted by Congress in 1996 to 'preserve the vibrant and competitive free market' for the Internet (47 USC § 230 [b] [2]), the statute immunizes providers of interactive computer services from civil lawsuits arising from user-generated content published on their platforms." In light of its purpose to encourage the free exchange of ideas on the Internet without government regulation, section 230 is construed broadly in favor of immunity. The Court further explained, "[w]ith respect to state law claims, section 230 protects from liability (1) a provider or user of an interactive computer service (2) whom a plaintiff seeks to treat, under a state law cause of action, as a publisher or speaker (3) of information provided by another information content provider."

Here, the court held, the complaints sought to hold the social media defendants liable as publishers of third-party content, and "the content-recommendation algorithms used by some of the social media defendants do not deprive those defendants of their status as publishers of third-party content. It follows that plaintiffs' tort causes of action against the social media defendants are barred by section 230." Even if the social media platforms could be construed as inherently dangerous products, "which is a rather large assumption indeed," the court held, because the strict products liability claims were based on the nature of the third-party content, section 230 afforded the social media defendants immunity. The mere fact that the social media algorithms arranged and displayed third-party racist content was not enough to transform the social media defendants into the developers or creators of that racist content beyond section 230's protection.

Therefore, the court explained, "content-recommendation algorithms are simply tools used by social media companies 'to accomplish a traditional publishing function, made necessary by the scale at which providers operate.' Every method of displaying content involves editorial judgments regarding which content to display and where on the platforms. Given the immense volume of content on the Internet, it is virtually impossible to display content without ranking it in some fashion, and the ranking represents an editorial judgment of which content a user may wish to see first. All of this editorial activity, accomplished by the social media defendants' algorithms, is constitutionally protected speech. Thus, the interplay between section 230 and the First Amendment gives rise to a 'Heads I Win, Tails You Lose' proposition in favor of the social media defendants. Either the social media defendants are immune from civil liability under section 230 on the theory that their content-recommendation algorithms do not deprive them of their status as publishers of third-party content, . . . or they are protected by the First Amendment on the theory that the algorithms create first-party content . . . Of course, section 230 immunity and First Amendment protection are not mutually exclusive, and in our view the social media defendants are protected by both. Under no circumstances are they protected by neither."

"We believe that the motion court's ruling, if allowed to stand, would gut the immunity provisions of section 230 and result in the end of the Internet as we know it. This is so because Internet service providers who use algorithms on their platforms would be subject to liability for all tort causes of action, including defamation. Because social media companies that sort and display content would be subject to liability for every untruthful statement made on their platforms, the Internet would over time devolve into mere message boards."

The dissenting Justices, in contrast, would have concluded that the "plaintiffs' collective strict products liability causes of action predicate liability on the allegedly defective design of the platforms themselves—and the concomitant failure to warn of the risks of addiction in young people—[and therefore] do not seek to hold defendants liable for any third-party content; thus, we conclude that those causes of action do not implicate section 230 of the Communications Decency Act or the First Amendment. Even if section 230 were implicated, however, we conclude that the use of an algorithm to push disparate content to individual end users constitutes the 'creation or development of information,' which could subject defendants to liability, and is not the type of editorial or publishing decision that would fall within the ambit of section 230."

CRIMINAL LAW, SUPPRESSION OF EVIDENCE, MARIHUANA REGULATION AND TAXATION ACT

***People v Martin*, 2025 NY Slip Op 03842 (3d Dept June 26, 2025)**

Issue: **Does Penal Law § 222.05 (3) (a), enacted as part of the Marihuana Regulation and Taxation Act, apply to a post-enactment suppression hearing concerning a pre-enactment search?**

Facts: "In September 2020, a state trooper stopped a vehicle in the Village of Fort Ann, Washington County, for having excessively tinted windows. When the driver rolled down the window, the trooper detected the odor of marihuana emanating from the vehicle and directed the occupants to exit. Upon a search of the occupants, the trooper discovered that two of them — including defendant, who was a passenger in the vehicle — had marihuana cigarettes in their possession. A backpack containing a digital scale and a white powdery substance was subsequently located in the trunk of the vehicle. The substance was confirmed to be cocaine and defendant admitted that the backpack was his."

Defendant was indicted for various drug crimes, and subsequently moved to suppress the evidence recovered in the stop because "the odor of marihuana or possession of marihuana in legally authorized amounts could no longer be the sole basis for a police search under provisions of the MRTA that had taken effect on March 31, 2021. Following a suppression hearing, County Court denied defendant's motion, concluding that Penal Law § 222.05 did not apply retroactively to invalidate the search and that the trooper had probable cause to search the vehicle and its occupants after detecting the smell of marihuana. Defendant pleaded guilty to criminal possession of a controlled substance in the third degree in satisfaction of the indictment with the understanding that he would be sentenced to five years of probation."

Holding: The Third Department, in a 3–2 opinion, reversed the conviction, "answering a question left open by the Court of Appeals in *People v Pastrana* (41 NY3d 23, 29 [2023], cert denied ___ US___, 144 S Ct 1066 [2024]) — namely, whether Penal Law § 222.05 (3) (a), enacted as part of the MRTA, applies to a post-enactment suppression hearing concerning a pre-enactment search." The Third Department majority held that it does, reasoning that MRTA's "comprehensive and present tense language . . . limits a suppression court's authority to base a probable cause finding solely upon evidence of the odor of marihuana without regard to when the vehicle search occurred." Recognizing that statutes are generally to apply prospectively without the Legislature providing explicitly for retroactive effect, the majority held that because this limitation applied to the court's evidentiary findings in pending criminal proceedings, applying that limit on the court's authority did not constitute retroactive application of the statute. "Since Penal Law § 222.05 (3) (a) was in effect at the time of the suppression hearing and the suppression court's probable cause finding was based solely upon the fact that the trooper smelled the odor of marihuana emanating from the vehicle, that determination was erroneous as a matter of law."

The Third Department dissent disagreed, and would have held that in light of MRTA's significant substantive changes in the law, "the evidence of the Legislature's intent that the amendment should not apply retroactively,' namely, the effective date of the statute itself, points to the conclusion that Penal Law § 222.05 (3) does not apply where a suppression hearing addresses a search conducted during an earlier period." The dissent explained, "the remainder of the MRTA, and its goal of repealing the existing system of marihuana prohibition and replacing it with a far more permissive framework, strongly suggests that this substantive effect was intended only for criminal conduct occurring after the effective date of the legislation. The directive in Penal Law § 222.05 (3) that the odor of marihuana does not provide 'reasonable cause to believe a crime has been committed' makes perfect sense in the aftermath of that repeal, as the possession of marihuana is generally not a crime under the new Penal Law article 222. It makes no sense when applied to suppression hearings addressing conduct under the old statutory regime, a time when law enforcement could conclude from the odor of marihuana that a crime had been committed because marihuana possession was, in fact, illegal. It accordingly appears to us that Penal Law § 222.05 (3) is inextricably tied to the broader repeal of marihuana prohibition effectuated by the MRTA and that we are bound by the statutory directive that 'all actions and proceedings, civil or criminal, commenced under or by virtue of any provision of a statute so repealed, and pending immediately prior to the taking effect of such repeal, may be prosecuted and defended to final effect in the same manner as they might if such provisions were not so repealed,' absent a specific direction to the contrary." And the dissent believed that MRTA contains no such direction.

TORTS, DRAM SHOP ACT

***Brown v Z-Live Inc.*, 238 AD3d 658 (1st Dept May 29, 2025)**

Issue: **Did the Appellate Division properly grant defendants' motion for summary judgment dismissing the Dram Shop claims as against them where the manager of defendants' establishments testified that their bartenders are trained not to serve intoxicated patrons, no incident reports were filed for the date in question, and the security tapes did not show the assailants leaving the bar?**

Facts: "On February 19, 2019, construction worker Darrick Brown was working the overnight shift at a construction site in New York City, which was located near a restaurant and bar owned by ZLive. The bar was open from 11:00 pm until 3:00 am that night for a ticketed event. Sometime after 3 am, Klevis Vulaj and Venton Balidmaj appeared at the construction site. Vulaj and Balidmaj were acting rowdy, Brown could smell alcohol on their breath, one of the men attempted to hug Brown and, when Brown 'blocked' the hug, that man cursed at Brown, using racial slurs. Both men then violently assaulted Brown. Vulaj and Balidmaj were charged with assault as a hate crime, but the police reports made no mention of intoxication."

Brown then brought Dram Shop Act claims against ZLive, alleging that the assailants had been unlawfully served alcohol when they were visibly intoxicated and they assaulted Brown as a result of their intoxication. Following discovery, ZLive moved for summary judgment, supported by its general manager's testimony "about training administered to bartenders instructing them not to serve visibly intoxicated patrons, the lack of incident reports for that night, and the lack of security footage capturing Vulaj and Balidmaj exiting the bar." Brown opposed, arguing that ZLive was required to submit affirmative evidence that "its employees did not serve Vulaj and Balidmaj alcohol or did not see any signs of visible intoxication," and could not meet its summary judgment burden merely by pointing to gaps in Brown's proof. Supreme Court agreed with Brown, and denied the motion for summary judgment.

Holding: The First Department, with two Justices dissenting, reversed, holding that ZLive had satisfied its summary judgment burden by submitting the general manager's testimony "concerning the training of employees and his investigation once receiving notice of this suit, namely, his review of security tape, search of incident reports for the evening, and conversation with the doorman who had been on duty that evening to confirm the lack of incidents . . . There is no evidence, circumstantial or otherwise, that the assailants were ever inside one of Z-Live's establishments, let alone sold alcoholic beverages by Z-Live's staff."

The dissenters would have affirmed, and held that "Z-Live failed to meet their prima facie burden to establish entitlement to judgment as a matter of law. Rather than submitting evidence negating any element of the claim, Z-Live merely pointed to gaps in plaintiff's proof, which is insufficient in the context of summary judgment. Notwithstanding the majority's remarks to the contrary, Z-Live's manager testified that after receiving notice of the lawsuit he performed no investigation related to the claim. The manager's limited testimony otherwise failed to carry Z-Live's prima facie burden, and the record contains no further affidavits from either party."

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