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Case A 2018

Supreme Court Appellate Division, 4th Department
New York

Mark Rutkowsky, Petitioner

v.

The YMCA, Respondent

Facts of the Case:

(Note: for this case you must consider the YMCA to be a government-run agency. Non-profits are notoriously close to government anyway, so this is not a huge stretch of the imagination).

Mark Rutkowsky had worked for the YMCA for forty years before being terminated for conduct detrimental to a government agency. As part of his punishment he also lost his pension. Mark had been the conference organizer for New York Youth and Government (Y&G) for twenty years. Under his leadership he grew the program from approximately 400 students to 600 students. Mark also represented the New York Y&G program at Conference of National Affairs (CONA) for twenty-five years. Mark mentored students who have gone on to be selected as committee chairs and presiding officers at both the state and national level. In a forty-year career Mark had only been reprimanded once for the Bowerman "Speedo" incident of 2003. Mark had quickly corrected that problem by ending the use of the pool at Y&G. Otherwise he was a model employee who was regularly promoted and had received bonuses during financially sound years.

The YMCA had a direct budget from the YMCA for Y&G, which was supplemented by dues paid by the students. Mark's problems began when the economy declined in 2007. Not only was his budget decreased, but he realized that not enough funds were being devoted to Y&G to provide scholarships for students who could not afford to pay on their own. Mark tried traditional fundraisers and applied for grants but by 2009 over fifty students were unable to attend the conference.

In 2017, Mark began directing funds from other YMCA programs to provide money for scholarships. Mark "redirected" $20,000.00, which allowed an extra 100 students to attend. Mark never took a dollar for himself. In order to do this, Mark falsified financial records, created false status reports, and lied to his direct superiors on at least ten occasions. During this same period, Mark had several, but not an excessive number of, unauthorized absences because he needed to construct the fake documents at home to avoid being caught at work. He could not provide doctors notes and seldom could notify his supervisor in advance. Ironically, Mark took

funds from a YMCA mutual fund which was decimated by the debt ceiling crisis, and the money taken would have been lost in the stock market crash anyway.
When the YMCA learned of Mark's actions, Mark was terminated. Mark appealed the termination and revocation of his pension in a Section 75 Hearing. After all of the above evidence was entered, Mark testified that he only committed the conduct because it was in the best interests of the students. He also testified he was too old to get another job and he still had a responsibility to support himself and his wife during their retirement years. Hearing Officer Allison Bugenis stated she considered all of the evidence, found there was substantial evidence to support the charge of conduct detrimental to a government agency, and determined the penalty was appropriate.

Mark is now appealing Hearing Officers Bugenis' decision as being arbitrary and capricious. He specifically stated that the punishment was so disproportionate to the offense, in light of the all the circumstances, as to be shocking to one's sense of fairness.

Note: you must use your team numbers on all submissions to the Court.

Team _____ represents Mark Rutkowsky.

The following cases are the only cases you may use in your brief. If other cases are cited in the supplied cases you may cite to them, but only for the paragraphs from the original cases. The *Iarocci* case contains several summaries for other cases not given to you. Use the summaries in your brief and arguments as you see fit.

Iarocci v. West Haverstraw, 31 Misc. 3d 1222A (N.Y. 2011).
Muraik v. Landi, 19 A.D.3d 697 (N.Y. 2005).
Goudy v. Schaffer, 24 A.D.3d 764 (N.Y. 2005).
Alston v. Morgan, 245 A.D.2d 287 (N.Y. 1997).

Case B 2018

Raphael Ortega, Appellant
v.

The People of the State of New York, Respondents

Supreme Court Appellate Division, First Department
New York

Facts of the Case:

In February 2017, best friends Raphael Ortega and Atrion Raimundi attended the whitest wedding known to man in Saratoga, New York. In fact they were the only two minorities at the event, even when including the people working. Atrion is a 6' 3" light skinned clean shaven African American with a shaved head, who weighed in at 220 pounds on a good day. Raphael is a mixed race from Puerto Rican/Dominican descent with dark skin, a full head of hair, goatee. He is approximately 5' 9" and 160 pounds wet—at least until he gained ten pounds studying for the bar. Also attending the wedding was Flynn Jebb, who was Raphael's ex (after a very bitter breakup), and Atrion's current date. During the wedding Atrion approached "Slick Sam," the D.J. and requested the Electric Slide. Five minutes later Raphael approached Sam and asked for the Cha Cha Slide and Sam replied, "You just requested electric slide." Raphael, who was angry, replied that, "No, that was the other black guy." Later that evening many wedding guests saw a person they described as a minority in and around Sam's DJ equipment. At the end of the night Sam reported that his $5000 digital mixer was missing and told the police that the "other black guy" must have stolen it. He later identified Raphael in a line up. Two other people identified Raphael as the minority near the dance floor and one other witness was unsure. The police also interviewed Flynn who stated Atrion was with her most of the evening, but was also constantly in the dessert line (which was not near the dance floor), and that she saw Raphael on the dance floor. Atrion stated he was mostly in the dessert line and had the waistline to prove it. He also stated Raphael loved to dance and no matter what wedding they were at he would always be found on the dance floor or on the dessert line with Atrion. Two days before trial, Raphael's attorney contacted the prosecutor and told him that they would be calling Atrion as an alibi witness.

The matter proceed to trial. Raphael's attorney's opening argument centered around Atrion providing an alibi for Raphael that involved a lot of high calorie desserts. Raphael's attorney also subpoenaed Atrion as a defense witness. Atrion either misread the subpoena or the subpoena was wrong. He showed up to trial on the first day and was told to come back when it was the defense's case. Slick Sam testified he had not really gotten Atrion and Raphael mixed up; it was only that he did not like the Cha Cha Slide, so he was trying to anger Raphael. Flynn Jebb testified consistent with the above and included that Raphael had come back to their table at the wedding and retold the "other black guy" story to the other guests, who made him even angrier because they could not stop laughing. No one testified to seeing Atrion and Raphael together in the dessert line, but several people remember Atrion eating an entire cake. The People

rested at 3:00 p.m. and Judge Colleen Murtagh asked Raphael's attorney to call his first witness. Atrion was not in the courtroom and the attorney asked for an adjournment to the next day. The next day the attorney made the representation that he had spoken to Atrion on the phone and he had agreed to be there first thing in the morning. Judge Murtagh then asked where Atrion was and the lawyer did not have an answer. The lawyer asked for a second adjournment until 2:00 p.m., which was granted. At 2:00 p.m., the attorney made the representation that he had talked to Atrion's family, who stated he had missed the bus because he could not run fast enough and they were not sure how far he would have to walk to get to court. Raphael's attorney asked for a material witness warrant, which was denied. Judge Murtagh also denied his next request for a continuance and made Raphael proceed. Raphael conferred with his counsel for about ten minutes after which Judge Murtagh became impatient and asked if the defendant was going to testify. The attorney asked for a fifteen minute break, which was granted; he then asked for another thirty minute break, which was denied. Judge Murtaugh muttered something like "This trial needs to end in the next six months." Raphael then testified that Atrion was with him in the dessert line for a significant amount of time during the wedding and the prosecution cross examined him on the fact that Atrion's existence only came to light two days before the trial. Raphael was convicted and sentence to one year in jail.

Raphael now appeals the judge's decision to deny his third request for a continuance on the grounds that Judge Murtaugh's denial of the two motions for adjournment violated his rights to call witnesses on his behalf and to effectively confer with his counsel.

Note: you must use your team numbers on all submissions to the Court.

Team _____ represents Raphael Ortega.

The following cases are the only cases you may use in your brief. If other cases are cited in the supplied cases you may cite them but only for the paragraphs from the original cases.

People v Adair, 84 A.D.3d 1752 (N.Y. App. Div. 4th Dep't 2011).
People v. Foy, 32 N.Y.2d 473 (N.Y. 1973).
People v. Singleton, 41 N.Y.2d 402 (N.Y. 1977).
People v. Spears, 64 N.Y.2d 698 (N.Y. 1984).

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Case C 2018

The People of the State of New York, Appellants
v.

Deidre Rubenstrunk, Respondent

Supreme Court Appellate Division,
Fourth Department New York

Facts of the Case:

In March of 2017, Deidre Greeley and Brian Rubenstrunk moved into a three bedroom fixer-upper in Mastic, Long Island in preparation for their marriage in July 2017. Brian was a handy guy who could fix almost anything, so the two began gutting the house to the joists and rafters in an effort to create their "dream home." Things began to deteriorate when they started working on the kitchen just days before the wedding. Next door neighbors Aaron Taggert and Jane Henderson could hear their verbal arguments and both clearly remember Deidre threatening Brian that "If the Kitchen was not finished before their honeymoon, he was a dead man."

Brian and Deidre returned from Bora Bora with the kitchen still in disrepair. They hosted a dinner party for their good friends Jane, Aaron, Kelsey Willford and Logan Bowman. The party was a disaster because a kitchen cabinet fell on Murphy's head, splitting his skull and then hit Deidre in the back of the head as she tried to help Logan. Deidre was further incensed that all of the women guest—including her—were wearing the exact same outfits (a Michael Kors steel grey dress), which is common in Long Island. All of the guests remember Deidre giving Brian her patented "death look" and quietly saying, "You're finished." The next morning, Deidre dialed 9-1-1 and reported Brian had been shot in the kitchen. The murder weapon was found on the floor next to Brian's body. No sign of forced entry or fingerprints were found except for those of the dinner guests. The police also found a nanny cam (Deidre denied knowing one existed) that clearly showed a woman of Deidre's height and wearing a steel grey dress shooting Brian in the kitchen and dropping the gun to the floor. The video was black and white, shot from behind so the viewer cannot see the shooters face, and only lasted about four seconds. Deidre told police she had been hit in the back of the head by someone around midnight and then work up the next morning. The police found the gun still in place on the floor, but the lab messed up all of the potential forensic tests, including a finger print and DNA test of the weapon as well as a gunshot residue test of Deidre's dress.

Based on the testimony of the witnesses from the party and video from the nanny cam, Deidre was charged and tried for second degree murder. The main witness for the People was Logan Murphy, who gave riveting testimony that Deidre was in a mood to kill that night after her pasta was ruined by the accident. Logan was subjected to extensive cross examination concerning the extent of his injuries from cabinet falling on his head. The second most important

witness was Jane Henderson who corroborated Logan's story and added information about the early fights she could hear next door. Both Jane and Kelsey were cross examined thoroughly on the fact that they could have been the woman in the video and that each had a potential motive to kill Brian. Kelsey was cross-examined about a possible affair she was having with Brian and the defense produced a picture of Brian with his arm around her at a barbeque. Jane was also cross-examined about a potential affair she was having with Brian, but the Judge did not give the defense much leeway because there was no corresponding photo. Kelsey and Aaron were less helpful to the prosecution and only testified that things were tense, but they could not tell if Deidre was joking when she said he was finished. Aaron could not remember the earlier arguments. Deidre was convicted and sentenced to twenty-five years to life in prison.

Deidre filed a CPL Section 440.10 Motion for a New Trial based on newly discovered evidence approximately two months after the original trial, based on several factors. She included a sworn affidavit that Logan Murphy had been being treated for memory loss from the time of the accident and was actually committed to Stonybrook University labs for dementia approximately two days after testifying. She also included a sworn affidavit from Kelsey Willaford that stated a week after the murder Jane Henderson told her that she had killed Brian because he was obnoxious, despite the fact that she loved him. Additionally, Deidre provided a sworn affidavit from Aaron that stated that about a month after the trial he had gone to a bar where Jane was drinking. Jane had had too much to drink and Aaron overheard her say aloud that she was sorry that she killed him, but he was obnoxious after all. Defense counsel attempted to obtain a sworn affidavit from Henderson, but she refused.

The trial judge considered all of the Salemi factors and found that Deidre did not meet the six-factor test from *Salemi*, but failed to state why. Then the judge granted the motion for a new trial anyway, stating that "Where there is that much smoke something is probably burning."

The People of the State of New York now appeal this decision stating it was not in the judge's discretion to grant the motion if the Salemi test is not met. Deidre Rubenstrunk also appeals the ruling because she believes she did meet the six-factor test based on the evidence she has submitted.

Note: you must use your team numbers on all submissions to the Court.

Team _____ represents People of the State of New York.
Team _____ represents Deidre Rubenstrunk.

The following cases are the only cases you may use in your brief. If other cases are cited in the supplied cases you may cite them but only for the paragraphs from the original cases.

People v. Salemi, 309 N.Y. 208 (1955).
People v. Balan, 484 N.Y.S.2d 648 (N.Y. App. Div. 2d Dep't 1985).
People v. Macon, 924 N.Y.S.2d 311 (N.Y. Sup. Ct. 2011).
People v. Powell, 424 N.Y.S.2d 626 (N.Y. County Ct. 1980).

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Case D 2018

Supreme Court Appellate Division, 4th Department
New York

Chuck Maze on behalf of 15 Minors
Petitioners
v.

City of Albany, New York, Respondents

Facts of the Case:

During the 2017 New York State Y&G conference held at the Capital in Albany, fifteen minors became trapped on a City elevator for approximately two hours. During that time their advisors could communicate with them and they had plenty of sugar snacks and coffee since none of them had slept the night before. The City quickly dispatched two state police officers, who suffered the verbal abuse of several Youth Advisors while they waited for an elevator repair technician to arrive and open the doors. As a result, all fifteen student-attorneys were late for their run-throughs, which could have been detrimental to their respective law firms. Waiting at the door when it opened was Chief Legal Advisor Joe DePadilla who advised the students to quit whining and to "get to your courtrooms because you are late!" Every student was on time to complete their tasks.

Katie Boardman, who volunteered at the conference, had just opened her own firm after clerking for two years and she smelled her first class action suit with a big contingent fee payout. She contacted the parents of the fifteen students and interviewed all of them concerning the pain and suffering they endured from being trapped in the elevator with only the caffeine laden drinks and snacks they had at the time. None of the students seemed that traumatized and Katie was disappointed. Katie went home and discussed what happened with her husband, Jeremy. Jeremy had just started working as her paralegal after the Democrats shut down Standard and Poors for giving the United States a bad credit rating. Jeremy told Katie she was asking the wrong questions—she should have asked the students if they were traumatized because they were late for a requirement enforced by Joe DePadilla, who Jeremy found intimidating in the past. Jeremy suggested they interview every student who had worked in the legal program in Y&G since 1996. Since Katie had no other clients, the two of them spent all their time doing just that. They found that the fifteen students did suffer a lot of anxiety in dealing with Joe, especially after the elevator incident. They also interviewed 2000 former students including Molly Warren and Jane Henderson, who stated they had lived in fear of Joe for years and they easily imagine the psychological damage the students would have suffered from being late. The vast majority of students though Joe was no big deal and one student, Michael Cousins, actually liked him.

Katie and Jeremy filed suit against the City of Albany after two years of research. Pre-trial

deposition, motions, and other matters took another year. The case went to trial for two fiercely litigated weeks with twenty witnesses. The Boardman's won on all counts. This was the first plaintiffs victory ever under the theory that a third party could cause pain and suffering from an industrial accident. The jury awarded each of the students a year's supply of Red Bull and Snickers bars. The Boardmans then submitted their costs and fees. They provided two spreadsheets documenting every interview, all of the legal research, motions practice, and trial time which added up to 2.5 million dollars. Judge Robin Kheleher, who presided over the litigation, also reviewed the fee request. She decided to apply the Lodestar method. She set the hourly rate for Katie at $300.00 (which was the American Bar Associations reasonable rate for class actions by experienced attorneys in Albany), and Jeremy at $150.00 (as a paralegal) for hours out of trial and double that for his time in trial. She then calculated the hours for the interviews to be 1000 hours, motion practice as 200 hours, interrogatories as 1000 hours, and trial time as 80 hours. Jeremy was only billed for ½ of the interviews and Katie for the rest, which yielded a sum of $633,000.00. (The judge's calculation of the hours was derived by the spreadsheets submitted by the Boardmans, the Judge reduced the reported hours by 30% in all categories, besides trial from the original hours). Judge Kheleher then reduced the amount by $50,000 because it was Katie's first case, increased the amount by $100,000 because it was Katie's only case, increased it $50,000 because it was novel, decreased it $25,000 because of the amount recovered on behalf of each student (approximately $46.22) for a final total of $708,000.

The Boardmans and the City of Albany now appeal the Judges' determination of fees. The City claims the amount should be less because the judge did not fully research the reported hours, over counted the interview hours because so few witnesses were for the plaintiffs (everyone knows Joe is universally loved by Judicial participants), over calculated the hourly rate, and did not reduce the fee enough because the students basically recovered a six pack of coke and two snickers bars. The Boardmans claim the amount should be more because the judge arbitrarily reduced the number of hours they spent, did not take into account the novelty of the suit (making Joe into a bad guy is very hard to do because he is universally loved by Judicial participants), and did not take into account that they won on all claims.

Note: you must use your team numbers on all submissions to the Court.

Team _____ represents the Boardmans.

The following cases are the only cases you may use in your brief. If other cases are cited in the supplied cases you may cite them but only for the paragraphs from the original cases. Note the Lodestar test is in the Rahmey case and you should probably start there.

Matakov v. Kel Tech, 924 N.Y.S.2d 344 (1st Dept. 2011).
Fleming v. Barnwell, 865 N.Y.S.2d 706, (3rd Dept. 2008).
Lunday v. City of Albany, 42 F.3d 131 (2nd Cir. 1994).
Rahmey v. Blum, 466 N.Y.S.2d 350 (2nd Dept. 350).