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.

To be argued Thursday, October 16, 2014

No. 190 Matter of Gorman v Rice

Catherine Gorman was charged with driving while intoxicated, unsafe lane change, and endangering the welfare of a child while driving home from a bridal shower in Nassau County in 2006. Her first trial ended in a mistrial at the request of defense counsel. During her retrial in District Court, after defense counsel said the judge had engaged in prejudicial conduct "verging on the point of a complaint being needed," the judge declared a mistrial and left the courtroom. On his return, the judge said, "Before we broke, I declared a mistrial. I reviewed the record, and it is clear that defense counsel said that my conduct verged on needing a complaint being filed. That being said, I am unable to preside over this trial. And I'm assuming, counsel, that you agree that I cannot -- I should not --- ... be able to preside over this trial." Defense counsel replied, "Yes sir." The judge said, "Then on consent, I'm going to declare a mistrial." Defense counsel said, "Judge, I'm not consenting to a mistrial.... Judge, I ... wasn't paying attention. No, I didn't mean to say that." After further discussion, the judge called a recess to permit defense counsel to consult with his client, saying, "If you and your client decide you want me to preside over this trial, then I'll reconsider it." When proceedings resumed, defense counsel said, "... regrettably we're going to go with the mistrial." The judge responded, "Very good. A mistrial is declared at the request of the defendant."

Before Gorman's third trial began, she petitioned for a writ of prohibition. She argued that she had not consented to the mistrial and, thus, further prosecution was barred by double jeopardy principles.

Supreme Court granted the petition and barred the retrial, finding Gorman "did not waive her right against double jeopardy by allegedly consenting to the mistrial for two reasons. First, there was no actual consent.... [T]he following quotations from defense counsel become most telling, 'Judge, I'm not consenting to a mistrial' and 'regrettably we're going to go with the mistrial'.... The defendant had serious concern, if not fear, about [her] ability to obtain a fair trial. In that context, acquiescence, not consent, was given by the defense.... Second, the consent to the court's declaration of a mistrial was meaningless because [Gorman's] consent was obtained after the court had already announced a mistrial.... [T]he bright-line rule is that the trial ends immediately upon a judge's declaration of a mistrial in open court and on the record.... The court has no power to continue the trial by withdrawing its declaration or asking for the defendant's consent after the declaration of a mistrial."

The Appellate Division, Second Department reversed. "The mere declaration of a mistrial does not terminate a criminal trial and thereby divest the trial court of the authority to rescind the declaration.... Accordingly, the Supreme Court erred in determining that the District Court did not retain the discretion to rescind its previous declaration of a mistrial prior to the discharge of the jury. Moreover, the District Court's initial declaration of a mistrial, made without [Gorman's] consent, was rescinded and, thereafter, a mistrial was declared upon [Gorman's] consent."

For appellant Gorman: Harry H. Kutner, Jr., Mineola (516) 741-1400
For respondent Rice: Nassau County Asst. District Attorney Barbara Kornblau (516) 571-3800

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To be argued Thursday, October 16, 2014

No. 191 Coleson v City of New York (*papers sealed*)

On June 25, 2004, Jandy Coleson was ambushed and stabbed by her husband, Samuel, when she went to pick up her seven-year-old son from his school in the Bronx. Two days earlier, she had called the police when he appeared at her apartment and threatened to kill her. He was arrested later that day. At the precinct, an officer told Coleson that her husband was "going to be in prison for a while" and that the police would give her "protection." Later that evening, an officer called from the precinct and told Coleson that her husband was "in front of the judge" and the court would "sentence him." Instead, he was released on his own recognizance the next day -- June 24, 2004 -- after his arraignment.

Jandy Coleson brought this personal injury action against New York City and its Police Department, contending that they breached a special duty by failing to provide promised police protection. Supreme Court granted the City's motion to dismiss the suit, finding Coleson "failed to establish the requirements for a special relationship."

The Appellate Division, First Department affirmed, based on Valdez v City of New York (18 NY3d 69 [2011]). The majority said, "The statements allegedly made by police officers and other employees of defendants -- that plaintiff's husband would spend time in jail, and that the police would provide 'protection' of an unspecified nature -- were too vague to constitute promises giving rise to a duty of care...."

Two justices concurred on constraint of Valdez, but wrote separately "to express concern at the current posture of the law regarding special duties of care by government entities." They said police made several "concrete statements" to Coleson -- that her husband would be in prison "for a while," that he was "in front of the judge" and would be sentenced -- that, prior to Valdez, "might well have been found to form a reasonable basis for plaintiff to believe that she would be safe from any further attack.... These alleged statements purported to inform plaintiff, apparently unequivocally, that her husband was in police custody and would remain there." The concurring justices expressed "fear that in the post-Valdez system, the police are now permitted to lull a domestic violence complainant into a false sense of security and then, when tragic results befall the complainant, disavow responsibility for having done so."

For appellant Coleson: Sang J. Sim, Bayside (718) 631-7300
For City: Assistant Corporation Counsel Susan Paulson (212) 356-0821

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To be argued Thursday, October 16, 2014

No. 192 Matter of Kilduff v Rochester City School District

This school disciplinary case hinges on the meaning of Education Law § 3020(1), which generally provides that tenured teachers are to be disciplined under the procedures specified in section 3020-a, which gives teachers a right to a hearing. An exception in section 3020(1) makes teachers subject to "alternate disciplinary procedures contained in a collective bargaining agreement ... that was effective on or before September [1, 1994] and has been unaltered by renegotiation." Where there are "alternative disciplinary procedures contained in a collective bargaining agreement ... that becomes effective on or after September [1, 1994]," section 3020(1) provides that teachers must be allowed to choose whether to proceed under section 3020-a or under the disciplinary procedures in the CBA.

Roseann Kilduff, a tenured social worker in the Rochester City School District, was informed by the District in September 2011 that she would be suspended for 30 days without pay for insubordination and other alleged misconduct. The District denied her request for a hearing under section 3020-a, saying that its CBA with the Rochester Teachers Association provides for such a hearing only when a teacher faces discharge and that all other cases are subject to the grievance and arbitration procedures in the CBA. After the District denied her grievance, Kilduff filed this article 78 proceeding to challenge her suspension, arguing the District violated section 3020(1) when it refused to afford her a hearing.

Supreme Court ruled in favor of the district, saying Kilduff was bound by the disciplinary provisions of the current CBA that took effect in July 2006 because they were the same as the disciplinary provisions of a CBA that took effect prior to September 1994. It found "no merit to [Kilduff's] assertion that the renegotiation of any terms" in a CBA renders inapplicable the exception in section 3020(1) that permits the discipline of a tenured teacher without a hearing. "Rather, the express terms of the statute require that the alternate disciplinary procedures and not just any term must have been altered by renegotiation...."

The Appellate Division, Fourth Department reversed and ordered the School District to reinstate Kilduff with back pay and benefits, finding it violated section 3020(1) when it suspended her without a hearing. It said the "plain language" of section 3020(1) "provides that a tenured teacher facing discipline, and whose terms and conditions of employment are covered by a [CBA] that became effective on or after September 1, 1994, is entitled to elect either the disciplinary procedures specified in [section] 3020-a or the alternative procedures contained in the CBA." Since the Rochester District's CBA took effect in July 2006, the court said Kilduff was entitled to her choice of disciplinary procedures and the District should have granted her request for a section 3020-a hearing.

For appellant School District et al: Cara M. Briggs, Rochester (585) 262-8412
For respondent Kilduff: Anthony J. Brock, Latham (518) 213-6000

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To be argued Thursday, October 16, 2014

No. 193 People v Howard Grubstein

In 2008, Howard Grubstein was charged with driving while intoxicated in the Town of Tuxedo, Orange County. At his arraignment in Town Court, he waived counsel and pled guilty to a misdemeanor count of driving while intoxicated. He did not appeal. In 2010, Grubstein was again arrested in Orange County for drunk driving. In light of his previous conviction, he was indicted on two class E felony counts of driving while intoxicated. He then moved in Tuxedo Town Court to withdraw his guilty plea to the 2008 DWI charge on the grounds that he did not have counsel when he entered the plea and that the court did not advise him that, should he re-offend, he could be charged with felony DWI as a result of the misdemeanor conviction.

Town Court treated Grubstein's motion as one to vacate the 2008 conviction under CPL 440.10 and, after reviewing the record, granted the motion. The prosecution appealed and filed an affidavit of errors, which said Town Court's decision failed to set forth required findings of fact and conclusions of law, among other things. Town Court filed a response to the affidavit of errors, saying that based on its review of the transcript of the 2008 plea proceeding, "it is evident that the Defendant was advised of his right to counsel by the Court. However, it is the Court's belief that the Defendant's waiver of counsel was not made knowingly or intelligently. The Defendant seemed to vacillate on his waiver of counsel and did not seem to understand the potential risks of appearing 'pro se.'"

Appellate Term, Ninth and Tenth Judicial Districts, reversed and reinstated the 2008 judgment of conviction. "We find that, to the extent that adequate facts appeared in the record to evaluate certain of defendant's claims regarding the sufficiency of the plea allocution, the only possible avenue of review was a direct appeal," it said, concluding that Grubstein's motion to vacate was precluded by CPL 440.10(2)(c).

While CPL 440.10(2)(c) precludes a post-judgment motion to vacate due to a defendant's "unjustifiable failure" to raise the issues on direct appeal, Grubstein argues the Town Court never advised him of his right to appeal and, thus, his failure to take a direct appeal is justified and CPL 440 relief is available. On the merits, he argues that his waiver of the right to counsel was invalid because Town Court failed to ensure that he understood the risks of proceeding without counsel, and so his motion to vacate the 2008 conviction was properly granted.

For appellant Grubstein: Richard L. Herzfeld, Manhattan (212) 818-9019
For respondent: Orange County Asst. District Attorney Elizabeth L. Schulz (845) 615-3640

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To be argued Thursday, October 16, 2014

No. 194 People v Derrick Hill

At Derrick Hill's trial for driving while intoxicated in 2010, his defense attorney asked the arresting officer a series of questions to elicit testimony that Hill had been polite and cooperative during his arrest and at the precinct -- that he took a breathalyzer test and physical sobriety tests at the officer's request, and that he responded that he understood when the officer read his Miranda rights and then signed the card. The prosecutor then sought to elicit testimony that Hill refused to answer any further questions from the officer. "Defense counsel in my view just opened the door on Miranda. His argument here is that defendant was cooperative, he just asked him if he would ask him any questions, asked him Miranda, was the defendant cooperative. In fact [] the defendant refused to answer questions...," the prosecutor said. "In this case he opened the door by even bringing up the Miranda card." The court permitted the officer to testify that Hill refused to answer any questions after the Miranda rights were read, and later instructed the jury, "Under the law, Mr. Hill is not required to answer any questions by the police. The jury is not permitted to draw a negative inference from the fact that Mr. Hill exercised that right." Hill was convicted of driving while intoxicated and driving while ability impaired.

The Appellate Division, First Department affirmed, rejecting Hill's claim that the admission of testimony that he refused to waive his Fifth Amendment rights deprived him of a fair trial. "The court properly exercised its discretion in determining that defendant's cross-examination opened the door ... to limited testimony that defendant declined to make a statement to the arresting officer," it said. "Defendant pursued a line of questioning that created misleading impressions about his post-arrest interactions with the police.... Furthermore, any potential prejudice was prevented by the court's thorough instruction, which defense counsel drafted, and which the jury is presumed to have followed...."

Hill argues, "Counsel did not open the door to evidence of pre-trial silence merely by asking a police witness whether appellant ... responded appropriately when read his Miranda rights, where counsel similarly asked whether appellant was cooperative when administered breathalyzer and coordination tests, and where there was nothing in counsel's questions that was misleading or for any other reason required the introduction of otherwise inadmissible evidence." He says such evidence has long been "presumptively inadmissible" under New York law.

For appellant Hill: Jonathan Garelick, Manhattan (212) 577-3607
For respondent: Manhattan Assistant District Attorney Philip Morrow (212) 335-9000