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, September 18, 2014

No. 169 People v Jermaine Dunbar
No. 170 People v Collin F. Lloyd-Douglas
No. 171 People v Eugene Polhill

The Queens County District Attorney's Office instituted a program whereby arrested individuals are interviewed just prior to arraignment, using a script which is read before the individuals are advised of their constitutional rights as required under Miranda v Arizona (384 US 436 [1966]). The primary question in each of these appeals is whether this pre-arraignment procedure is effective to secure the individuals' constitutional right to counsel and privilege against self -incrimination.

Jermaine Dunbar was convicted of attempted robbery in the second degree and criminal mischief in the fourth degree. Collin Lloyd-Douglas was convicted of attempted murder in the second degree and other crimes. Eugene Polhill was convicted of attempted robbery in the second degree. Each of the three defendants were interviewed, pre-arraignment, by an assistant district attorney using a script formulated by the Queens County District Attorney's Office, pursuant to which the defendants were told that they would be informed of their Miranda rights "in a few minutes," and they would be "given an opportunity to explain what [they] did and what happened." The defendants were instructed, among other things: "If there there is something you need us to investigate about this case you have to tell us now so we can look into it." The defendants were informed that if they have "already spoken to someone else," they were not required to speak to the ADA, but they were informed that "[t]his will be your only opportunity to speak with us before you go to court on these charges." After this "preamble," the defendants were informed that the interview was being recorded, advised of the right to be arraigned without further delay, and read Miranda warnings. Each of the defendants gave a statement, which was used against him at trial after Supreme Court denied each of the defendant's motion to suppress.

On appeal, the Appellate Division, Second Department, reversed in each case, concluding that the script followed in the pre-arraignment interview process was not effective to secure the privilege against self-incrimination. The court determined that the preamble suggested a "sense of immediacy and finality" that impaired suspects' "reflective consideration of their rights and the consequences of a waiver." The Appellate Division further determined that the admission of the statements was not harmless error.

The People argue that the Appellate Division erred in applying a "per se rule to automatically require suppression of [a] defendant's voluntary videotaped statement without regard to whether the interviewers' pre-Miranda remarks impacted the knowing, intelligent, and voluntary nature of th[e] particular defendant's waiver."

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To be argued Thursday, September 18, 2014

No. 172 Matter of State of New York v Donald DD. *(papers sealed)*
No. 173 Matter of State of New York v Kenneth T. *(papers sealed)*

The primary common question in these appeals is whether a diagnosis of antisocial personality disorder is sufficient to support a finding that an individual is a dangerous sex offender requiring civil confinement under Mental Hygiene Law article 10.

Donald DD.'s criminal record include numerous sex-related convictions, including convictions for rape in the second degree and attempted rape as a result of sexual activity with two girls under the age of 14 and a conviction for sexual abuse in the second degree as a result of his rape of an adult acquaintance. He was released to parole supervision in 2008 and, shortly thereafter, detained and charged with violating the terms of his parole by failing to register as a sex offender, among other things.

As Donald DD.'s latest release from custody approached, the State commenced a proceeding pursuant to Mental Hygiene Law article 10 alleging that he is a sex offender requiring civil management. Following a jury trial, Donald DD. was determined to suffer a mental abnormality as defined by Mental Hygiene Law § 10.03 (i). After a dispositional hearing, Supreme Court found him to be a dangerous sex offender in need of confinement.

Kenneth T. was convicted of rape in the first degree in 1983 and, while on parole in 1999, committed an act that resulted in his conviction in 2001 of attempted rape in the first degree. The State petitioned for civil management of Kenneth T. in 2008 as he was again nearing an anticipated release date from incarceration. After a nonjury trial, Supreme Court found that Kenneth T. suffers from a mental abnormality within the meaning of Mental Hygiene Law
§ 10.03 (i). After a dispositional hearing, Supreme Court found him to be a dangerous sex offender requiring confinement.

The Appellate Division affirmed in both cases, finding clear and convincing evidence for the determinations that Donald DD. and Kenneth T. were dangerous sex offenders requiring confinement. The Third Department specifically rejected Donald DD.'s contention that antisocial personality disorder could not constitute a mental abnormality within the meaning of the Mental Hygiene Law because it does not necessarily have a sexual component.

Donald DD. and Kenneth T. argue primarily that antisocial personality disorder, which does not have a sexual diagnostic criteria, cannot serve as the basis for civil confinement under Mental Hygiene Law article 10. Kenneth T. further argues that the diagnosis of paraphilia not otherwise specified cannot serve as the basis for his civil confinement because it was based solely on his past crimes.

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