State of New York Court of Appeals

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To be argued Wednesday, April 29, 2015 (arguments begin at noon in White Plains)

No. 78 People v Rasaun Sanders

Rasaun Sanders was arrested with three other men for the fatal stabbing of 16-year-old Douglas Williams during an alleged gang assault in Mount Vernon in May 2009. Sanders initially denied any involvement in the crime during his interrogation at police headquarters. After an hour or two, an FBI agent entered the interview room and told Sanders that he could be prosecuted federally if he had been involved in the homicide and that he might be a candidate for the death penalty. At some point after the agent left the room, Sanders admitted that he stabbed Williams and he made a videotaped confession. He later moved to suppress his incriminating statements on the ground they were coerced by the threat of death.

Westchester County Court denied the suppression motion. Regarding the FBI agent's mention of the death penalty, the court said, "That is not the gentlest nudge the court has ever heard, that is true. But the court does not feel that in the context of the overall interview that it rose to the level of being coercive." It said Sanders had been read his Miranda rights and "had incrementally been changing his stance with respect to his involvement in the case over the course of time," it said, and the FBI agent's interaction with Sanders "was fairly brief" and "did not ... immediately trigger a lengthy dialogue or discourse regarding the death penalty...."

On the eve of trial, Sanders accepted an offer to plead guilty to first-degree charges of manslaughter and gang assault in exchange for a sentence of 20 years in prison. At the plea proceeding, the prosecutor asked Sanders if he understood that, as a condition of his plea, he was waiving the right to appeal his conviction and sentence to "the Appellate Division, Second Department;" if he had discussed the waiver with his attorney; and if he was voluntarily waiving his right to appeal. Sanders answered "yes" to all three questions.

The Appellate Division, Second Department affirmed on a 3-1 vote, finding that he waived his right to appeal the denial of his motion to suppress the confession. The colloquy advising him of his right to appeal to the Appellate Division resulted in a valid waiver, it said. "While the words 'higher court' were not used in this instance..., reference was made to the Appellate Division, Second Department, which is a higher court, and the one to which the defendant would have had the right to appeal directly had he not waived his right to appeal. There is no distinction between the two references."

The dissenter argued the waiver was invalid because "[n]either the prosecutor nor the plea court explained to the defendant the nature of his right to appeal" and, while he was informed of his right to appeal to the Appellate Division, "there is no indication ... that, from these terms, the defendant understood the nature of the rights he was surrendering by waiving his right to appeal.... The concept of a 'higher court' is much more understandable to a person lacking legal training than is a reference to the Appellate Division, Second Department. To a nonlawyer, the words 'Appellate Division, Second Department' are simply jargon." She also argued the confession was coerced and should have been suppressed. "The defendant was threatened, by the FBI agent, with the possibility of death. This threat was used to overcome the defendant's will, which is so 'fundamentally unfair as to deny due process'...."

For appellant Sanders: Mark Diamond, Manhattan (917) 660-8758
For respondent: Westchester County Assistant District Attorney Jennifer Spencer (914) 995-3497

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To be argued Wednesday, April 29, 2015 (arguments begin at noon in White Plains)

No. 79 Deleon v New York City Sanitation Department

Alex Irrizarry Deleon brought this personal injury action against the City of New York, its Sanitation Department, and the driver of a City-owned street sweeper that struck the rear of Deleon's Jeep in the Bronx in October 2010. The City moved for summary judgment dismissing the suit, arguing the street sweeper was a "hazard vehicle" that was not subject to ordinary negligence under Vehicle & Traffic Law § 1103(b), which limits the liability of owners and operators of "hazard vehicles" to cases where they are operated with reckless disregard for the safety of others.

Supreme Court granted the City's motion to dismiss, finding the street sweeper "was a 'hazard vehicle' engaged in street sweeping at the time of the accident under VTL 1103(b)...." The court said there was "no evidence of any recklessness by the operator of the sweeper."

The Appellate Division, First Department reinstated Deleon's lawsuit in a 4-1 decision, ruling the reckless disregard standard in Vehicle and Traffic Law § 1103(b) did not apply to the street sweeper in this case, which is therefore governed by the ordinary negligence standard. "At the time of the accident, in 2010, Vehicle and Traffic Law § 1103(b) was superceded by Rules of the City of New York Department of Transportation [34 RCNY 4-02(d)(1)(iii)], which excepted street sweepers ... from compliance with traffic rules to the limited extent of making such turns and proceeding in such directions as were necessary to perform their operations.... While subparagraph (iv) contained a broader exception, expressly invoking Vehicle and Traffic Law § 1103, we find that subparagraph (iv) did not include street sweepers because that would have rendered subparagraph (iii) redundant and meaningless. Indeed, when 34 RCNY 4-02 was amended, in 2013, the City Council explained in its 'Statement of Basis and Purpose' that the effect of the adopted rule would be 'that operators of [City street sweepers] will now be subject to the general exemption set forth in subparagraph (iv) of that same subsection' (emphasis added) -- a strong indication that they were not so subject before then."

The dissenter argued that the reckless disregard standard applied "because Vehicle and Traffic Law § 1103 was incorporated by [34 RCNY] § 4-02(d)(1)(iv) as it existed at the time of the parties' accident.... The majority's contrary position is apparently based on an erroneous interpretation of the then existing 34 RCNY 4-02(d)(!)(iii)," which "merely provided that an operator of" a sweeper, plow or similar vehicle "'may make such turns as are necessary and proceed in the direction required to complete his/her cleaning, snow removal or sand spreading operations....'" He said, "There is no contradiction between sections 4-02(d)(1)(iii) and 4-02(d)(1)(iv).... [S]ection 4-02(d)(1)(iv) expressly adopted a reckless disregard standard while section 4-02(d)(1)(iii) provided for no standard at all. Therefore, there is no basis for the majority's conclusion that section 4-02(d)(1)(iii) would be rendered meaningless by an application of the section 4-02(d)(1)(iv) standard to the operation of street sweepers."

For appellants City et al: Assistant Corporation Counsel Elizabeth I. Freedman (212) 356-0836
For respondent Deleon: David L. Scher, Manhattan (212) 736-5300

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To be argued Wednesday, April 29, 2015 (arguments begin at noon in White Plains)

No. 80 Matter of Shannon

Edna Shannon, a Westchester County resident, was admitted to Eastchester Rehabilitation & Health Care Center, a skilled nursing facility, in 2005. Supreme Court found her to be incapacitated in 2009 and appointed Family Service Society of Yonkers as guardian to handle her financial affairs. In June 2010, Eastchester filed a $164,000 claim with Family Service Society for services it provided to Shannon that were not covered by Medicaid, but it did not reduce its claim to a judgment. In September 2010, the Westchester County Department of Social Services (DSS) informed Family Service Society that Shannon owed it $166,000 for Medicaid benefits and, in January 2011, DSS informed the guardian that the amount had grown to $192,000, but it did not ask for payment at that time. Shannon died in December 2011 at age 87. When Family Service Society commenced this proceeding to settle its final account as guardian, Eastchester (seeking $223,000) and DSS (seeking $272,000) each contended they had the superior claim to the remaining assets in Shannon's estate, which were insufficient to pay either claim in full.

Supreme Court ruled that DSS was entitled to priority for its lien pursuant to Social Services Law § 104, which makes a welfare agency with a Medicaid lien a "preferred creditor." It said, "[T]he failure of Eastchester to reduce its claim to Judgment ... is fatal to its claim as a general creditor," and it ordered the guardian to pay the $179,599 remaining in the estate to DSS.

The Appellate Division, First Department reversed in a 3-1 decision, holding that, "since Eastchester's claim arose before Shannon's death, and [Mental Hygiene Law §] 81.44(d) allows the guardian to retain assets to secure known claims, Eastchester's claim has priority over that of DSS, which arose after Shannon's death.... Eastchester's claim accrued during [Shannon's] lifetime ... with no competing creditors. Thus, Eastchester should have been paid before any funds passed to the estate. DSS, as a preferred creditor..., had a priority claim only against the estate.... [I]t was irrelevant that Eastchester had not reduced its lien to a judgment, which would have given it priority over competing creditors, because DSS had no viable competing claim against Shannon's guardianship account. Contrary to the dissent, nothing in Mental Hygiene Law § 81.44(d) and (e) 'limit[s] the guardian's right to retain property equal in value only to [its administrative] expenses...,'" but instead "authorizes the guardian to pay off any known claims."

The dissenter argued DSS has priority. "Mental Hygiene Law § 81.44 ... is designed for the limited purpose of paying expenses incurred in administration of the guardianship.... [S]ubdivisions (d) and (e), when read together..., limit the guardian's right to retain property equal in value only to [its administrative] expenses.... Inasmuch as Eastchester's claim for services was unrelated to the administration of the decedent's guardianship, the guardian could not retain the funds to pay the claim...; rather, the guardian was required to turn the funds remaining ... over to ... the decedent's estate.... [A]s to the decedent's estate, Eastchester merely stands as a general creditor whose claim is subordinate to that of DSS...."

For appellant Westchester County DSS: Eileen Campbell O'Brien, White Plains (914) 995-4194
For respondent Eastchester: Sarah C. Lichtenstein, Lake Success (516) 328-2300

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To be argued Wednesday, April 29, 2015 (arguments begin at noon in White Plains)

No. 81 Matter of Delroy S. *(papers sealed)*

Delroy S. was 11 years old in July 2011, when he was arrested for stabbing an 11-year-old neighbor during a fistfight in the Bronx. When police officers arrived at the scene, they said, Delroy's 27-year-old sister told them he "was being bullied" by the victim, got into a fight and stabbed him. She led two officers to her family's apartment, where Delroy had gone. When they saw how "very small" Delroy was, one of the officers asked him what happened," without first reading his Miranda rights or asking to speak with a parent. They said he replied, "in sum and substance, 'The kid was bullying me. I went to get my brother for help, but I couldn't find him so I grabbed a knife. I went back out and we started fighting again so I stabbed him.'"

The Corporation Counsel's Office filed a juvenile delinquency petition in Bronx Family Court alleging that Delroy was guilty of acts that, if committed by an adult, would constitute assault in the second degree and criminal possession of a weapon, among other things. Delroy raised a defense of justification, saying he acted in self defense, and moved to suppress his statement to the police on the ground it was obtained in violation of his constitutional rights. Family Court denied his motion and, after a fact-finding hearing, adjudicated Delroy a juvenile delinquent and placed him on probation for 18 months.

The Appellate Division, First Department upheld the determination. "The court should have suppressed [Delroy's] statement on the ground that it was the product of custodial interrogation without Miranda warnings," it said. However, the court found the error was harmless beyond a reasonable doubt. "Independent of the statement, which added little to the presentment agency's case, there was overwhelming evidence that both established appellant's guilt of the assault and weapon charges and disproved his justification defense. In what began as a fistfight, appellant stabbed his unarmed opponent in the back at a time when appellant clearly had the ability to retreat safely rather than using deadly physical force."

Delroy argues the error was not harmless "because (1) the prosecution itself demonstrated the importance of the statement by choosing to introduce it in its case-in-chief...; (2) an improperly admitted incriminating statement made by the accused will almost always be harmful; (3) as drastically shortened and summarized by the testifying police officer, Delroy's statement did not indicate that the stabbing was in self defense and thus was prejudicially misleading...; and (4) the evidence was not overwhelming on the justification issue given that the bigger complainant, who was accompanied by a gang of youths, was the initial aggressor and used deadly physical force, attempting to strangle Delroy, right before Delroy stabbed" him once.

For appellant Delroy S.: Raymond E. Rogers, Manhattan (212) 577-3544
For respondent NYC Corporation Counsel: Michael J. Pastor, Manhattan (212) 356-0838

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To be argued Wednesday, April 29, 2015 (arguments begin at noon in White Plains)

No. 82 People ex rel. Bourlaye T. v Connolly *(papers sealed)*

In 1988, while visiting Staten Island from his home in Ivory Coast, Bourlaye T. was convicted of second-degree attempted murder, first-degree rape, sexual abuse and other crimes and was sentenced to 12 to 36 years in prison. In March 2012, as he neared his conditional release date, he was placed in custody of U.S. Immigration and Customs Enforcement (ICE) for deportation. Instead of deporting him, ICE released Bourlaye into the community on December 7, 2012, apparently without notice to the state Department of Corrections and Community Supervision (DOCCS). He reported to the Staten Island parole office and stayed at his approved residence, where parole officers arrested him five days later, on December 12, and took him to Fishkill Correctional Facility.

On January 9, 2013, Bourlaye filed this petition for a writ of habeas corpus against William J. Connolly, Fishkill's superintendent, alleging his arrest and confinement violated due process. On the same day, the state attorney general filed a petition for civil management of Bourlaye as a "detained sex offender" under Mental Hygiene Law article 10. On January 29, 2013, Supreme Court issued an order finding probable cause to believe Bourlaye should be confined pending trial in the article 10 proceeding.

Supreme Court denied Bourlaye's habeas corpus petition. It said "any alleged unlawful detention" between December 12, 2012 and January 29, 2013, "was rendered moot" by the January 29 probable cause order, "which provided an independent basis" for his confinement.

The Appellate Division, Second Department affirmed, saying, "Even if [Bourlaye's] detention were unlawful at the time the article 10 proceeding was commenced," his habeas corpus petition was properly denied. "[T]he probable cause order issued in the article 10 proceeding provided an independent basis for the confinement of the petitioner pending the outcome of that proceeding.... The petitioner's contention that the article 10 proceeding was 'jurisdictionally flawed' because he did not meet the definition of a 'detained sex offender' is without merit. Not only was the petitioner under parole supervision at the time the article 10 proceeding was commenced..., he was actually imprisoned.... [T]he statutory language of article 10 does not distinguish between lawfully and unlawfully detained sex offenders...."

Bourlaye argues that he "was living at his assigned homeless shelter and complying with the terms of his parole supervision" when he was "illegally" arrested, "without cause to believe he committed a crime or violated the conditions of his release, and without affording him any of the process to which he was constitutionally and statutorily entitled. The State's intentional, illegal deprivation of [his] liberty failed to confer upon the Supreme Court jurisdiction to adjudicate the Mental Hygiene Law article 10 petition for [his] civil management. Because his arrest was unlawful, and because the article 10 proceeding was a nullity, Bourlaye T. must be released from DOCCS custody so that he can enter ICE custody and be deported."

For appellant Bourlaye T.: Ana Vuk-Pavlovic, Mineola (516) 746-4373
For respondent Connolly (State): Assistant Solicitor General Jason Harrow (212) 416-8025