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 Tuesday, February 17, 2015 (arguments begin at 2:30 p.m.)

No. 39 Schoenefeld v State of New York

Ekaterina Schoenefeld, a sole practitioner who resides and maintains her law office in Princeton, New Jersey, is also licensed to practice law in New York and California. She brought this federal action to challenge the constitutionality of Judiciary Law § 470, which requires nonresident attorneys who are admitted to practice in New York to maintain an "office for the transaction of law business" within the state in order to practice in New York courts. Among other claims, she argued that the statute violates the Privileges and Immunities Clause of the U.S. Constitution, which provides, "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

U.S. District Court for the Northern District of New York granted summary judgment to Schoenefeld and declared section 470 unconstitutional, saying "the practice of law is plainly a fundamental right under the Privileges and Immunities Clause.... Section 470 places an additional threshold cost on all nonresidents wishing to practice law in New York -- an additional threshold cost that resident attorneys are not required to incur. A resident attorney of New York may operate an office for the practice of law out of his home or residence," while "a nonresident attorney must maintain, at minimum, both her residence in another state and an office in New York." The court said the state defendants "failed to establish either a substantial state interest advanced by section 470, or a substantial relationship between the statute and that interest."

The U.S. Court of Appeals for the Second Circuit, saying "this appeal turns on the meaning of 'office for the transaction of law business' as used in N.Y. Judiciary Law § 470," is asking this Court to resolve the issue in a certified question. It was skeptical of defense arguments that the phrase need not be read "to require a physical office space with a desk, a telephone, and staff," but may instead be read "to require merely an address at which a nonresident attorney may be served legal papers" or even "the designation of an agent in New York to receive service of papers." The court said State Supreme Court and the Appellate Division "have never interpreted section 470's office requirement to be satisfied by something less than the maintenance of physical office space in New York state.... We also note that the term 'office,' by itself, although not exactly pellucid, implies more than just an address or an agent appointed to receive process."

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No. 40 People v Richard Garcia
No. 41 People v Joshue DeJesus

The common question in these unrelated homicide cases is whether the trial courts erred in admitting police testimony that non-testifying witnesses had implicated the appellants in fatal shootings, hearsay testimony that prosecutors said was necessary to explain why the police focused their investigations on the appellants. The appellants argue that admission of the hearsay testimony violated their rights to due process and to confront the witnesses against them.

Prosecutors called only one eyewitness at each trial to identify the defendants; and the judges gave jurors no limiting instruction that they were not to consider the police officers' "background" testimony for its truth. Richard Garcia was convicted of first-degree manslaughter for fatally shooting Michael Colon during an argument over money on East 145th Street in the Bronx in 2005. He was sentenced to 20 years in prison. Joshue DeJesus was convicted of second-degree murder for fatally shooting Julio Montes in 2006, during a confrontation outside a bar at 135th Street and Broadway in Manhattan. He is serving 20 years to life.

The Appellate Division, First Department affirmed both convictions. In Garcia, it said, "The court properly permitted the People to introduce evidence that the victim's nontestifying sister told a detective that the victim had been having an unspecified 'problem' with [Garcia], who was the victim's long-term acquaintance. This testimony was presented not for the truth of the matter asserted, but to explain why the police focused on [Garcia] and spent [two] years attempting to locate him...." It said the trial court should have given the jury a limiting instruction, but found the error was harmless.

In DeJesus, the First Department said, "A detective's brief, limited testimony that [DeJesus] was already a suspect at the time the People's main witness was interviewed did not violate the Confrontation Clause. This evidence was not offered for its truth..., but for the legitimate nonhearsay purposes of completing the narrative, explaining police actions, providing the context of the interview, correcting a misimpression created by defendant on cross-examination and preventing jury speculation...." It said DeJesus failed to preserve his claim that a limiting instruction was necessary and, in any event, any error was harmless.

Both appellants argue that the police officers' "background" testimony was inadmissible hearsay that violated their right to confront witnesses. They also argue that, in a single-witness identification case, the failure to give jurors a limiting instruction was not harmless, but highly prejudicial. DeJesus says police testimony that they had identified him as the shooter, hours before they spoke with the witness they called at trial, "clearly signaled" to the jury that other, non-testifying witnesses had implicated him in the crime. Garcia says testimony that the victim's sister told a detective he had been in a dispute with Garcia, "which the jury must have considered for its truth, amounted to additional, seemingly credible inculpatory evidence."

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To be argued Tuesday, February 17, 2015 (arguments begin at 2:30 p.m.)

No. 43 People v Boris Shaulov *(papers sealed)*

Boris Shaulov was 23 years old in 2009, when he was accused of engaging in sexual intercourse and other sexual activities with a 16-year-old girl in Borough Park, Brooklyn. Shaulov was charged with multiple counts of third-degree rape and related charges, both statutory crimes based on the girl's age and forcible crimes alleging lack of consent. Prior to trial, the prosecutor told Supreme Court and defense counsel that the complainant did not report the incident to anyone for more than six months, when she told a family member and the principal of her school. The prosecutor sought permission, if the defense tried to use the girl's delayed outcry to undermine her credibility, to call an expert on rape trauma to explain why a rape victim might delay reporting it.

In their opening statements, both the prosecutor and defense counsel told jurors there was a long delay before the complainant reported the incident to anyone. However, when the complainant took the stand, she testified that she called a friend while on her way home after the incident and told her "what happened," but did not tell her friend she had not consented. Defense counsel moved for a mistrial and to strike the testimony on the ground of unfair surprise, arguing the complainant's unexpected statement that she promptly disclosed the encounter to her friend undermined his trial strategy and his approach to jury selection. The court denied the motions, finding the defense was not "unduly" prejudiced. Shaulov was convicted of statutory rape and other counts based on the complainant's age, but was acquitted of the charges alleging lack of consent. He was sentenced to an aggregate term of two years in prison.

The Appellate Division, Second Department affirmed, saying the trial court "did not improvidently exercise its discretion in denying the defendant's motion for a mistrial on the ground of unfair surprise."

Shaulov argues the trial court abused its discretion by not granting a mistrial and by admitting the complainant's prompt outcry testimony in view of "the patently prejudicial nature" of the evidence. "The record is clear that [defense] counsel was sandbagged into delivering his opening statement," in which he said the complainant did not report the incident for months. "When complainant debunked counsel's opening statement within minutes ... he lost all credibility with the jury." He also argues his trial counsel, after the complainant testified that she promptly reported the incident to her friend, provided ineffective assistance by failing to object to testimony by a prosecution expert that sex crime victims commonly delay reporting the crimes.

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