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 or gspencer@nycourts.gov.

To be argued Tuesday, March 28, 2017

No. 45 People v Jose Valentin

Manhattan narcotics detectives watched Jose Valentin and Jose Barrios walking together around Harlem in May 2010 when, after about 40 minutes, Barrios handed money to Valentin, who crossed the street and went into an apartment building. Valentin emerged minutes later and handed some small wrapped objects to Barrios. The two men then resumed walking together. The detectives stopped and searched them a block away, finding two glassines of heroin on Barrios and $8.00 on Valentin. Both were arrested on drug charges.

At trial, after the prosecution presented its case, Valentin's attorney asked Supreme Court to instruct the jury on the defense of agency. Defense counsel did not present any evidence, but argued that the prosecution's evidence supported the view that Valentin was acting as an agent of Barrios -- that he did not sell heroin to Barrios, but bought two glassines for them to use together. The court agreed to give the instruction, but also allowed the prosecutor to rebut the agency defense with evidence that Valentin had a prior drug sale conviction in 1997. The jury found Valentin guilty of criminal sale of a controlled substance in the fifth degree and he was sentenced to four years in prison.

The Appellate Division, First Department affirmed, saying, "Upon granting the defense request for an agency defense based upon aspects of the People's evidence, the court properly allowed the People to introduce evidence of defendant's prior drug sale conviction (see People v Small, 12 NY3d 732, 733 [2009]).... [W]e see no reason to draw a distinction between the situation where a defendant testifies or otherwise elicits evidence to support an agency defense, and the situation where, as here, the defendant essentially adopts those portions of the evidence elicited by the People that support such a defense; in each instance, the People have the right of rebuttal."

Valentin argues, "The trial court erred in conditioning the jury charge on agency on the introduction of Mr. Valentin's prior drug sale conviction where the agency charge was supported entirely by the prosecution's case-in-chief, and there was no defense presentation to rebut." He says, "The purpose of rebuttal evidence is just that -- to rebut the case presented by the defense. When the defense presents nothing in support of its position, there is nothing to rebut. In these rare instances in which a prosecution's case undermines itself, a defendant should be free to argue the best defense reasonably drawn from the evidence without fear that a past conviction would unfairly tip the scales. Weak cases would not be unfairly converted into a trial of a defendant's character."

For appellant Valentin: Kate Mollison, Manhattan (212) 402-4100
For respondent: Manhattan Assistant District Attorney Brian R. Pouliot (212) 335-9000

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 or gspencer@nycourts.gov.

To be argued Tuesday, March 28, 2017

No. 35 Griffin v Sirva, Inc.

The primary question in this federal case is whether a company that was not a fired worker's direct employer can be held liable for discrimination under the New York State Human Rights Law, specifically Executive Law § 296(15), which prohibits the denial of employment on the basis of a criminal conviction. Section 296(15) provides, "It shall be an unlawful discriminatory practice for any person, agency, bureau, corporation or association ... to deny any license or employment to any individual by reason of his or her having been convicted of one or more criminal offenses, or by reason of a finding of a lack of 'good moral character' which is based upon his or her having been convicted of one or more criminal offenses, when such denial is in violation of the provisions of article twenty-three-A of the correction law."

Trathony Griffin was hired by Astro Moving and Storage Co. in 2008 and Michael Godwin was hired in 2010, both of them as laborers who packed household goods and moved them in and out of customers' homes. Astro obtained 70 to 80 percent of its business through an agency contract with Allied Van Lines, Inc. The contract prohibited Astro from using employees who had been convicted of certain specified crimes, including felony sex offenses, on any Allied jobs, and required Astro to ensure that all of its employees working on Allied jobs underwent criminal background checks by a contractor hired by Allied's corporate parent, Sirva Worldwide, Inc. Background checks conducted in 2011 found that Griffin pled guilty to first-degree child abuse and sexual misconduct in 1997, that Godwin pled guilty to first-degree rape and sexual abuse in 1999, and that both were designated sexually violent offenders. The contractor informed Allied, which informed Astro, which terminated their employment in February 2011. Griffin and Godwin brought this action in the Eastern District of New York against Astro, Allied and Sirva, alleging Human Rights Law violations under section 296(15).

U.S. District Court granted summary judgment motions by Allied and Sirva to dismiss the complaint against them, ruling they could not be held liable under the statute because they were not the direct employers of Griffin and Godwin. It found that section 296(15) applies only to an aggrieved party's "employer" because "to 'deny employment,' the denying entity must be an employer as understood by the caselaw interpreting the [Human Rights Law]."

The U.S. Court of Appeals for the Second Circuit, finding that neither the statutory language nor existing case law clearly settle the scope of liability under the statute, is asking this Court to resolve the issue in three certified questions: "(1) Does Section 296(15) ... limit liability to an aggrieved party's 'employer'? (2) If Section 296(15) is limited to an aggrieved party's 'employer,' what is the scope of the term 'employer' for these purposes, i.e., does it include an employer who is not the aggrieved party's 'direct employer,' but who, through an agency relationship or other means, exercises a significant level of control over the discrimination policies and practices of the aggrieved party's 'direct employer'? (3) Does Section 296(6) ..., providing for aiding and abetting liability, apply to § 296(15) such that an out-of-state principal corporation that requires its New York State agent to discriminate in employment on the basis of a criminal conviction may be held liable for the employer's violation of § 296(15)?"

For appellants Griffin and Godwin: Stuart Lichten, Manhattan (646) 588-4870
For amicus curiae State of New York: Assistant Solicitor General Philip V. Tisne (212) 416-6073
For respondents Sirva and Allied: George W. Wright, Manhattan (201) 342-8884

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 or gspencer@nycourts.gov.

To be argued Tuesday, March 28, 2017

No. 47 Carlson v American International Group, Inc.

After his wife was killed in a 2004 collision with a commercial van owned by MVP Delivery and Logistics, Inc. in Niagara County, Michael Carlson obtained a $7.3 million wrongful death judgment against MVP and its van driver. MVP's insurer paid its policy limit of $1.1 million, the only money Carlson has so far recovered.

DHL Express (USA), Inc. had a freight delivery contract with MVP at the time of the accident and Carlson argued MVP and its driver were insured under the "hired auto" provisions of DHL's insurance policies. He sued DHL and its insurers -- American Alternative Insurance Co. (AAIC), National Union Fire Insurance Company of Pittsburgh, and American International Group (AIG) -- to recover the unpaid portion of the judgment under Insurance Law § 3420(a)(2), which permits a prevailing plaintiff to sue a responsible insurer to satisfy a judgment if the insurer's policy was "issued or delivered in this state." The "hired auto" provisions of DHL's policies defined an insured as anyone "using with your permission a covered auto you own, hire or borrow," or similar language.

Supreme Court denied AAIC's motion to dismiss the suit, rejecting its argument that Carlson could not assert a direct claim under Insurance Law § 3420 because its policy was not issued or delivered in New York. The court said, "The law is clear that the location of the insured and the risk to be insured are the determinative factors rather than where a policy is actually delivered or issued.... Here, it is undisputed that the accident took place in New York State while the named insured was doing business within the state." In a separate decision, it rejected the insurers' claims that the MVP van was not a "hired auto" under DHL's policies. "[T]he record reflects a substantial amount of supervision and control exerted by DHL over the operations of MVP; including but not limited to, the fact that MVP's office was located inside a DHL facility; all of MVP's vehicles were garaged in DHL's facility; and DHL's managers provided daily instructions to employees of MVP," it said.

The Appellate Division, Fourth Department reversed and dismissed the suit, saying Carlson "may not recover against AAIC pursuant to section 3420(a)(2) because the policy was not 'issued or delivered in this state.' The parties and the court have improperly conflated the phrase 'issued or delivered' with 'issued for delivery,' which was used in the former version of Insurance Law § 3420(d), and therefore the definition of 'issued for delivery' is not relevant here.... The policy here was issued in New Jersey and delivered in Seattle, Washington, and then in Florida." In a separate decision, it ruled the insurers could not be sued under the "hired auto" provision because the delivery contract "does not show that DHL had sufficient control over the MVP vehicle in order for it to be deemed a 'hired' automobile. Rather, it showed that DHL hired MVP as an independent contractor to provide delivery services.... Moreover, inasmuch as DHL did not have control over the MVP vehicle, 'it cannot be said in any realistic sense that ... [DHL] could grant [MVP] permission to use it,'" the court said, quoting Dairylea Coop. v Rossal (64 NY2d 1).

For appellant Carlson: Edward J. Markarian, Buffalo (716) 856-3500
For respondent DHL Express: Patrick J. Lawless, Manhattan (212) 490-3000
For respondents AIG and National Union: Kevin D. Szczepanski, Buffalo (716) 856-4000
For respondent AAIC: Paul Kovner, Manhattan (212) 953-2381