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 Wednesday, October 11, 2017

No. 49 People v Stanley Hardee

In July 2010, three Manhattan police officers stopped Stanley Hardee on Lexington Avenue for speeding and weaving through traffic without signaling. When the officers surrounded his car, they said Hardee appeared to be nervous and kept looking around from them to his front-seat passenger and to the empty back seat. They asked him to stop looking around and to step out of the car, but he did not comply until they repeated the request two or three times. They frisked him, finding no weapon or contraband, and he continued to look over his shoulder toward the back seat of the car. One officer testified that Hardee's behavior suggested he might fight or flee so he decided to handcuff him but, with one wrist cuffed, Hardee began to resist. Another officer testified that Hardee's demeanor, repeated glances at the back seat, and refusal to follow directions led him to believe there was a weapon in the car. The officer picked up a shopping bag from the floor behind the passenger seat and, feeling something heavy, he looked in and saw a handgun. After Supreme Court denied his motion to suppress the gun, Hardee pled guilty to criminal possession of a weapon in the second degree and was sentenced as a persistent violent felony offender to 16 years to life in prison.

The Appellate Division, First Department affirmed in a 4-1 decision. "The testimony supports the trial court's finding that the facts available to the officers, including defendant's furtive behavior, suspicious actions in looking into the back seat on multiple occasions and refusal to follow the officers' legitimate directions, went beyond mere nervousness," the majority said. "Rather, defendant's actions both inside and outside of the vehicle created a 'perceptible risk' and supported a reasonable conclusion that a weapon that posed an actual and specific danger to their safety was secreted in the area behind the front passenger seat, which justified the limited search of that area, even after defendant had been removed from the car and frisked...."

The dissenter said, "Evidence that ... defendant behaved in a very nervous manner, looked several times toward the back seat of the car, and failed to comply with the officers' directives, was not sufficient to lead to a reasonable conclusion that a weapon located within the car presented an actual and specific danger to the officers' safety so as to justify a limited search of the car after defendant had been removed from the car and frisked without incident. There was no testimony that defendant looked in the specific direction of the bag or even the floor.... In the absence of objective indicators that could lead to a reasonable conclusion that there was a substantial likelihood that a weapon was located in defendant's car, the search was unlawful since no actual and specific danger threatened the safety of the officers...."

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For respondent: Manhattan Assistant District Attorney Jessica Olive (212) 335-9000

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To be argued Wednesday, October 11, 2017

No. 114 People v Mary Anne Grady Flores

This case arises from a series of demonstrations protesting the use of Reaper drones operated by an Air National Guard unit at Hancock Field in the Town of DeWitt, near Syracuse. In October 2012, Mary Anne Grady Flores and other protesters were arrested for disorderly conduct while demonstrating outside the gates of the airbase. DeWitt Town Court issued an order of protection at the request of Colonel Earl Evans, commander of the drone unit, requiring Flores and the others to "stay away" from Col. Evans and Hancock Field. The order gave the address of the airbase, but did not describe the boundary of the base nor specify how closely the protesters could approach. Flores was arrested again in February 2013, as eight other people demonstrated at the intersection of a public road and the driveway to the main gate of the base. Flores was acting as a spokeswoman for the group and taking photographs of the protest. She was charged with criminal contempt for violating the order of protection.

Col. Evans and other witnesses testified in DeWitt Town Court that, at the time of the 2013 protest, there were no signs marking the boundary of the airbase property, which a survey later found extended to the public road. There were "no trespassing" signs on the fence surrounding the base, which was about 170 feet from the road where the protesters had lined up blocking traffic onto the driveway. Flores was convicted of second-degree criminal contempt and sentenced to one year in jail and a $1,000 fine. She argued on appeal that the order of protection was not validly issued under CPL § 530.13(1)(a) because Col. Evans was not a victim of or witness to the 2012 protest and because the order was meant to protect property, not him. She also claimed it was overbroad and unconstitutionally vague.

Onondaga County Court reduced her jail term to six months and otherwise affirmed, finding that "the issuance of the order was in all respects proper. Colonel Evans could have qualified as either a victim or a witness of the October 25, 2012 protest. Moreover, the language in the order of protection was not overly broad or unconstitutionally vague. The language in the order gave the defendant notice of the prohibited conduct and was not written in such a manner that it permitted or encouraged arbitrary or discriminatory enforcement.... Indeed, [Flores] testified at trial that she understood that the order prohibited her from going on base property."

Flores argues the "vague" stay away order infringed on her First Amendment rights to freedom of speech, of assembly, and to petition for redress of grievances because it was "designed to bar protests in traditional areas of public access near the base entrance" and it restricted "more speech than is necessary to secure a significant government interest." Given the "great uncertainty" about the location of the base boundary, she says she could not be in criminal contempt because the order "provided no specificity as to what conduct was allowed or disallowed," did not say if she "was to simply stay off the base property or if she was to stay a certain distance away from the base," and did not "indicate how and where the defendant's presence on a public roadway outside the campus of Hancock Field would constitute a violation of the order." She also says the order was invalid because it was not issued to protect a crime victim or witness.

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For respondent: Onondaga County Chief Asst. Dist. Attorney James P. Maxwell (315) 435-2470

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To be argued Wednesday, October 11, 2017

No. 67 Bransten v State of New York

After the State notified judges that it would reduce its contributions to the cost of their health insurance premiums in 2011, 13 sitting and retired Supreme Court justices and two judicial associations brought this lawsuit to enjoin the action on the ground that it would violate the Compensation Clause of the State Constitution, which states, "The compensation of a judge ... or of a retired judge ... shall be established by law and shall not be diminished during the term of office for which he or she was elected or appointed." The State was acting to address a budget shortfall and it negotiated with public employee unions for wage and benefit concessions, including reduced insurance contributions, in return for immunity from layoffs. At the same time, the Legislature amended Civil Service Law § 167(8) to impose similar reductions in insurance contributions on non-union employees while also granting them immunity from layoffs. The change increased insurance costs for current judges by 6 percent and for retired judges by 2 percent.

Supreme Court denied the State's motion to dismiss the suit, finding the reduced insurance contributions were a direct diminution of judicial compensation because they increased the amounts withheld from judges' salaries.

The Appellate Division, First Department affirmed. Insurance benefits are protected "compensation" within the meaning of the Compensation Clause, it held, saying "it is settled law that employees' compensation includes all things of value received from their employers, including wages, bonuses, and benefits." It also ruled section 167(8) was unconstitutional as applied to judges because it subjects them to discriminatory treatment in violation of the Compensation Clause. The statute "affects judges differently from virtually all other state employees, who either consented to the State's reduced contribution in exchange for immunity from layoffs or were otherwise compensated by the State's promise of job security...," it said. "The judiciary had no power to negotiate with the State with respect to the decrease in compensation, and received no benefit from the no-layoffs promise, because their terms of office were either statutorily or constitutionally mandated."

The case returned to Supreme Court, which issued an order declaring Civil Service Law § 167(8) unconstitutional as applied to judges.

The State argues the reduction of its contributions did not implicate the Compensation Clause because it "did not directly affect any constitutionally protected compensation at all," but instead "merely increased the price of health insurance for those judges who chose to buy a state health insurance plan. This rise in premium prices did not affect judges' statutorily defined salaries, nor did it eliminate any payment given directly to judges." It says the statute did not discriminate against judges because the reductions "apply equally to ninety-eight percent of all state employees, including many state employees who, like judges, cannot collectively bargain.... [N]early all employees ... must pay the same range of prices for the same selection of state-subsidized health insurance plans. This evenhanded treatment is precisely the type of nondiscriminatory policy that the Compensation Clause does not disturb."

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