State of New York
Court of Appeals

To be argued Thursday, October 19, 2023

No. 82 Police Benevolent Association of the City of New York v City of New York

The Police Benevolent Association of the City of New York (PBA) and 16 other police unions filed this suit against New York City to challenge the validity of Administrative Code § 10-181, enacted in 2020, which made it a misdemeanor to use certain dangerous restraints during arrests. The statute provides, "No person shall restrain an individual in a manner that restricts the flow of air or blood by compressing the windpipe or the carotid arteries on each side of the neck, or sitting, kneeling, or standing on the chest or back in a manner that compresses the diaphragm, in the course of effecting or attempting to effect an arrest." The police unions argued that the statute, particularly the diaphragm compression ban, is unconstitutionally vague and that it is preempted by state criminal laws.

Supreme Court ruled the entire statute was void and unenforceable, saying the plaintiffs "have demonstrated that Section 10-181 is unconstitutionally vague as the phrase 'compresses the diaphragm' cannot be adequately defined as written." It noted the unions' argument that "an ordinary police officer will be unable to discern whether an arrestee's diaphragm is being compressed as the diaphragm is an internal muscle that contracts when air fills the lungs," and it said police department training manuals "do not meaningfully explain.... While the submitted training materials recite the text of the statute and give guidance on the location and function of the diaphragm, none give any guidance on the meaning of 'compresses the diaphragm.' There is no substance and the issue itself is simply ignored. As such, plaintiffs have established that the words 'compresses the diaphragm' are impermissibly vague." It refused to sever that portion of the statute from the chokehold ban, which the unions did not suggest was vague. Rejecting the unions' preemption claim, it said "there is nothing in the legislative history which indicates that the state legislature intended to preempt other legislative remedies."

The Appellate Division, First Department reversed and declared the statute constitutional. "The diaphragm compression ban is sufficiently definite to give notice of the prohibited conduct and does not lack objective standards or create the potential for arbitrary or discriminatory enforcement...," it said. "The only language plaintiffs take issue with is 'in a manner that compresses the diaphragm.' But the meaning of this language ... is sufficiently definite 'when measured by common understanding and practices....' [E]ven plaintiffs have no difficulty understanding the meaning of the word 'compress[]' when used in the context of the accompanying chokehold ban, which they do not challenge.... Purely accidental conduct (such as falling on top of someone) would never result in conviction since criminal liability always requires a 'voluntary act'.... A justification defense would also be available...." While "the impact on the diaphragm may be impossible to assess precisely," it said, "A trained police officer will be able to tell when the pressure he is exerting on a person's chest or back, in the vicinity of the diaphragm, is making it hard for the person to breathe, just as a driver should be able to tell when the amount of alcohol he consumed is making it unsafe for him or her to drive...." It agreed with the lower court that the statute is not preempted by state law.

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State of New York
Court of Appeals

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To be argued Thursday, October 19, 2023

No. 83 People v Marcus Brown

Marcus Brown is appealing lower court orders requiring him to register under the Sex Offender Registration Act (SORA) based solely on his guilty plea to first-degree unlawful imprisonment, although the trial court found there was no sexual component to his crime. Correction Law § 168-a makes unlawful imprisonment a "sex offense" when the victim "is less than seventeen years old and the offender is not the parent of the victim," and no proof of sexual misconduct or motive is required. Brown contends that, without any suggestion of sexual misconduct or threat by him, subjecting him to the registration and reporting requirements of SORA and the stigma of sex offender status violates his right to due process.

In 2010, Brown and two accomplices forced their way into his aunt's apartment in Queens and robbed her at gunpoint of $1700. The aunt's 10-year-old son, Brown's cousin, was present. The intruders bound the aunt with duct tape, but did not bind the boy. Brown pled guilty to first-degree unlawful imprisonment as well as robbery, burglary and related crimes. While in prison, officials did not assign him to sex offender counseling because his case "lacked sexual motivation."

At his SORA hearing, Supreme Court rejected Brown's constitutional objection to registration based on this Court's 2009 decision in People v Knox (12 NY3d 60), which held the state could require SORA registration by persons convicted of unlawful imprisonment or kidnapping, even where the crimes had "no actual, intended or threatened sexual misconduct," because it was rationally related to the state's interest in protecting children from sex crimes. It said no exception was required for cases where "there was neither a sexual assault nor any discernible risk of one" because the Legislature "could rationally have found that the administrative burden [of identifying such cases], and the risk that some dangerous sex offenders would escape registration, justified a hard and fast rule, with no exceptions." At Brown's SORA hearing, the court said it was "constrained by state law to require Mr. Brown to register under this case law even though the court does not find him to be a sex offender and that he posed no risk of sexual threat at all." It designated him a level one offender, the lowest risk level, saying "the only motivation for this crime was to steal money from Mr. Brown's aunt. There was no sexual contact or motivation on the defendant's part at all. The child involved was not even the target of the crime, was not physically or sexually abused, not kidnapped or detained for any prolonged period of time." The Appellate Division, Second Department affirmed, citing Knox.

Brown argues, "Unlike the defendants in Knox, Mr. Brown committed a robbery where his cousin was incidentally present. His cousin was not the target of the offense, nor was he kidnapped or detained for a period of days." In view of the SORA court's "uncontested finding" that he "posed no risk of sexual threat at all," he says, "Knox's concerns about the risk of 'some dangerous sex offenders ... escap[ing] registration' do not apply. Thus, the as-applied challenge raised here stands on its own merits, separate from the as-applied challenges raised in Knox." He says "imposing SORA for a non-sexual crime involving a minor violates substantive due process because it is not rationally related to SORA's explicit purpose of protecting the public from sex offenders."

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State of New York
Court of Appeals

To be argued Thursday, October 19, 2023

No. 84 People v Tramel Cuencas

Tramel Cuencas and his brother were charged with murder, kidnapping and related crimes after Thomas Dudley, a drug dealer, was abducted from his Brooklyn home in November 2012. Dudley's body was found the next day in a park in Queens with his throat and wrists slashed. Four days later, after an eyewitness to the abduction identified Cuencas and his brother in photo arrays, a team of police officers arrived before dawn at a two-family house in Brooklyn, where the brothers were living on the ground floor, for the purpose of making a warrantless arrest. The officers knocked and a man who lived in the second-floor apartment, Kwamel Jeter, opened the door. A detective testified at a suppression hearing that when he asked for permission to enter, the man did not speak but stepped aside "and opened the door a little bit wider." Once in the vestibule, the detective said the officers saw Cuencas through the open door of his apartment and arrested him, then arrested his brother in a bedroom. Jeter appeared as a defense witness at the suppression hearing and said that as soon as he opened the door, the officers ordered him to put his hands up and pushed past him with their guns drawn. He said they did not ask for permission to enter and he gave no permission.

Supreme Court denied a defense motion to suppress incriminating statements Cuencas made and a cell phone seized after his warrantless arrest, finding the police testimony more credible than Jeter's and ruling that Jeter gave the officers "tacit consent" to enter and that he had apparent authority to do so. The court said the police, once they were inside and saw Cuencas, had probable cause to arrest him without a warrant. It did not address the claim that the police violated the defendants' right to counsel by making warrantless arrests for the specific purpose of delaying attachment of the right to counsel, which would have attached when a warrant was obtained, so they could question Cuencas and his brother without counsel present. Cuencas was convicted at trial of second-degree murder and robbery and sentenced to 25 years to life.

The Appellate Division, Second Department affirmed, saying, "[W]e discern no reason to disturb the hearing court's credibility determinations, including the factual finding that Jeter tacitly consented to the police entering the apartment where the warrantless arrest of the defendant took place.... [S]uch consent is sufficient to negate the defendant's claim" of a Fourth Amendment violation under Payton v New York (445 US 573). It left Cuencas' right to counsel claim undecided, saying, "While this issue presents what appears to be an important constitutional question of first impression, we see no viable path to resolving this question in the defendant's favor within the current framework of New York law. Although the hearing evidence fully supports the defendant's view that the police went to the subject residence with the intent of making a warrantless arrest..., New York law does not presently recognize a 'new category of Payton violations based on subjective police intent....'"

Cuencas argues the police violated his indelible right to counsel "by coming to his residence with the intention of arresting him there without an arrest warrant, despite having probable cause and time to obtain one, because appellant's right to counsel would have attached had they obtained a warrant."

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State of New York
Court of Appeals

To be argued Thursday, October 19, 2023

No. 27 People v Anthony Debellis

Anthony Debellis was arrested for possession of a weapon in 2018 after he was stopped by police on the Bronx River Parkway for driving with an expired car registration. The officer saw a shiny object in his hand and Debellis said it was a gun magazine, but he denied having a gun with him. The officer found a loaded pistol under the driver's seat floor mat.

Defense counsel sought to establish at trial that DeBellis's possession of the firearm was temporary and lawful based, in part, on Debellis's testimony that he had been driving to a police precinct to turn in the pistol for cash under the NYPD's gun buyback program. He also testified that his gun license had been revoked more than a year before his arrest. Defense counsel did not ask the court to instruct the jury on the defense of voluntary surrender of a firearm under Penal Law § 265.20(a)(1)(f). Supreme Court denied the defense request to charge the jury on the temporary possession defense because Debellis admitted he had owned the gun for more than a year. He was found guilty of second-degree criminal possession of a weapon and related counts.

At sentencing, defense counsel told the court Debellis had just given him a pro se motion to set aside the verdict due to ineffective assistance of counsel. When the court asked if he would adopt the pro se motion, defense counsel said he would not and declared, "I am not going to argue that I was ineffective. I think I was very effective." The court read the pro se motion into the record, denied it on the merits, and sentenced Debellis to seven years in prison.

The Appellate Division, First Department affirmed, finding Debellis was not deprived of effective assistance by "his counsel's failure to request a jury instruction on the exemption from firearms possession laws for a person who voluntarily surrenders a weapon to the police.... There was no reasonable view of the evidence that defendant's conduct satisfied the requirements of that statute...." It further found Debellis had not shown prejudice because his "actions and statements before and during his arrest, including denying having a weapon, were utterly incompatible with his incredible testimony that he happened to be stopped by the police while driving to a police station to surrender his pistol as part of a buyback program." The court also rejected Debellis's claim that his counsel created a conflict of interest by taking an adverse position on his pro se motion, saying the attorney made "a brief and conclusory remark that he believed that he had provided effective assistance. Counsel never went beyond 'defending his performance'...." It said the trial court "'readily recognized the motion's lack of merit, independently of anything said by counsel'...."

Debellis argues he was deprived of effective assistance of counsel because his attorney "conceded weapon possession before the jury but, due to ignorance of the law, failed to present the only applicable defense: voluntary surrender of a firearm under Penal Law § 265.20(a)(1)(f). Instead, counsel went all-in on a baseless temporary-and-innocent possession defense that, as the court correctly held, did not apply as a matter of law. Defense counsel's prejudicial course of conduct effectively directed a guilty verdict against his own client." He also contends his attorney created a conflict by taking an adverse position on the merits of his pro se motion when counsel said, "I think I was very effective."

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