State of New York
Court of Appeals

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NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

Week of October 10 thru October 11, 2018

State of New York
Court of Appeals

To be argued Wednesday, October 10, 2018

No. 117 People v Saylor Suazo

Saylor Suazo, an undocumented immigrant from Honduras, was charged with several domestic violence offenses for allegedly assaulting his girlfriend inside her Bronx apartment in February 2011. Supreme Court granted the prosecutor's motion to reduce the original class A misdemeanor charges to class B misdemeanor attempted crimes, which carry a maximum sentence of 90 days in jail. Suazo moved for a jury trial. Although B misdemeanors are ordinarily "petty offenses" that do not require a jury trial under the Sixth Amendment because the maximum sentence is less than six months, Suazo argued the charges in his case were "serious" offenses because he would be subject to deportation under the federal Immigration and Nationality Act if he were convicted of any of the domestic violence charges. Supreme Court disregarded his motion and conducted a bench trial, finding him guilty of four counts including attempted assault in the third degree and attempted criminal obstruction of breathing or blood circulation. The court sentenced him to 60 days in jail.

The Appellate Division, First Department affirmed, ruling Suazo was not deprived of his Sixth Amendment right to a jury. "'An offense carrying a maximum prison term of six months or less is presumed petty, unless the legislature has authorized additional statutory penalties so severe as to indicate that the legislature considered the offense serious,'" it said, quoting Lewis v United States (518 US 322). "Despite the gravity of the impact of deportation on a convicted defendant..., deportation consequences are still collateral..., and do not render an otherwise petty offense 'serious' for jury trial purposes. Furthermore, under defendant's approach, in order to decide whether to grant a jury trial to a noncitizen charged with B misdemeanors, the court would need to analyze the immigration consequences of a particular conviction on the particular defendant, and we find this to be highly impracticable. We note that the immigration impact of this defendant's conviction is unclear. He is already deportable as an undocumented alien, and only claims that the conviction would block any hypothetical effort to legalize his status."

Suazo argues that, under Lewis and Blanton v City of N. Las Vegas (489 US 538), he "did not need to prove that he would be deported because of his conviction for one of the offenses, only that a conviction would make him deportable, because whether a crime is a serious one is not measured by the penalty actually imposed, but by the maximum penalty that may be imposed.... Added to the 90-day maximum term of incarceration available for a conviction of any of the charged offenses, the fact that a conviction for any of them rendered Mr. Suazo deportable rebutted Blanton's presumption that the offenses were not serious ones. Regardless of whether deportation is classified as a direct or collateral consequence, it is a penalty within the meaning of Blanton, because additional penalties must be included in the Blanton calculus even if they are collateral consequences, so long as those consequences result from government action required by statute or regulation."

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State of New York
Court of Appeals

To be argued Wednesday, October 10, 2018

No. 115 Matter of DeVera v Elia

In 2014, the State Legislature amended Article 73 of the Education Law by adopting section 3602-ee, which expanded the state's pre-kindergarten program and for the first time permitted charter schools to obtain state funds through a consolidated application by their local school district or by direct application to the State Education Department (State Ed). Section 3602-ee(12) states that "charter schools shall be eligible to participate" in Pre-K programs "provided that all such monitoring, programmatic review and operational requirements under this section shall be the responsibility of the charter entity and shall be consistent with the requirements under" the Charter School Act. Subsection 10 of the statute provides, "Notwithstanding any provision of law to the contrary, a [Pre-K] provider shall be inspected by" State Ed and "the school district with which it partners, if any..., no fewer than two times per school year...."

In 2015, Success Academy Charter Schools - NYC applied to the New York City Department of Education (DOE) for Pre-K funding on behalf of three of its charter schools. DOE responded that the proposed programs were "conditionally eligible," but payment would be subject to the execution of contracts that set requirements for the school year calendar, curriculum, daily schedules, staff qualifications and training, field trips, and meals. Success Academy objected that the contracts unlawfully permitted DOE to regulate the Pre-K programs of its charter schools, which it said were subject to the sole authority of their charter entity, the State University of New York (SUNY). The schools conducted their Pre-K programs without signed contracts, then submitted to DOE invoices totaling $720,000 for the 2015-16 school year. When DOE refused to pay without signed contracts, Success Academy appealed to State Education Commissioner MaryEllen Elia.

Commissioner Elia rejected Success Academy's argument that DOE lacked authority to regulate its Pre-K programs through contracts and found that DOE could require signed contracts as a condition for funding. Elia said section 3602-ee(12) gave the charter entity (SUNY) concurrent responsibility with DOE for ensuring compliance with Pre-K grant requirements. Supreme Court upheld the Commissioner's determination as rational.

The Appellate Division, Third Department reversed, finding the Commissioner misread section 3602-ee as giving school districts "extensive power to regulate the programing and operations" of charter school Pre-K classes. Citing the provision in subsection 12 that "all such monitoring, programmatic review and operational requirements ... shall be the responsibility of the charter entity," it said that "the Legislature's use of the term 'all' tasked the charter entity with full responsibility for the relevant 'monitoring, programmatic review and operational requirements'" for Pre-K programs. "The plain meaning of the provision in no way indicates that another entity -- such as a school district -- holds concurrent responsibility...." It said the inspection requirement in subsection 10 "does not indicate that the school district has the power to create the standards against which the [Pre-K] program is tested."

Commissioner Elia and DOE argue subsection 12 gives charter entities concurrent authority with school districts and State Ed for overseeing charter school Pre-K programs. Section 3602-ee "gives districts significant monitoring authority to ensure that every collaborating provider remains in compliance ... with the statute's stringent programmatic and operational requirements -- requirements that apply to all program providers without exception," Elia says. Subsection 12 gave charter entities a role, but "does not exist to take responsibility away from school districts" and State Ed. "That reading makes sense because charter entities otherwise have no role in the supervision of pre-K programming, which falls outside the scope of instruction charter schools are authorized to provide under Article 56. Moreover, only such a reading harmonizes the subsection with the statutory scheme as a whole and properly serves the legislative purpose to assure that pre-K providers remain accountable for the state funds they receive."

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For appellant Elia: Assistant Solicitor General Zainab A. Chaudhry (518) 776-2031
For respondent Success Academy: Steven L. Holley, Manhattan (212) 558-4000

State of New York
Court of Appeals

To be argued Wednesday, October 10, 2018

No. 116 Town of Aurora v Village of East Aurora

The Village of East Aurora built the Brooklea Drive bridge in the early 1970s, apparently without formal consultation with the Town of Aurora. In 2006, the State Department of Transportation (DOT) issued a report that the bridge had structural deficiencies and that the Village was responsible for repairs. DOT issued similar reports in each of the next four years. After receiving the 2010 report, the Village responded that the Town was responsible for maintaining the bridge. In 2011, 2012 and 2013, DOT issued reports flagging the bridge as structurally deficient and identifying the Town as being responsible for repairs.

In 2014, the Town brought this action for a declaration that the Village is solely responsible for the cost of repairing the bridge. It said the Village had maintained exclusive supervision and control of the bridge since it was built and never properly relinquished control of the bridge to the Town pursuant to the Village Law. The Village counterclaimed for a declaration that the Town is responsible for the repairs. It said the Village Law makes towns responsible for local bridge repairs unless a village assumes that duty through the "exclusive mechanism" of Village Law § 6-606, which permits a village board to assume control and maintenance responsibility for a bridge by adopting a resolution or to enter into an agreement with a town to share repair costs for a bridge.

Supreme Court, Erie County, granted the Village's motion for summary judgment and declared the Town is responsible for repairing the Brooklea Drive bridge. "The law is clear that absent a village assuming control, care and maintenance of a bridge, responsibility for repair and maintenance lies with the town," it said. "Section 6-606 of the Village Law clearly sets forth the procedure whereby a village assumes such responsibility. There is no evidence in the record before this court establishing that the village assumed control, care and maintenance pursuant to that procedure of the bridge at issue...."

The Appellate Division, Fourth Department, reversed and declared the Village is responsible for the repair costs. It found section 6-606 does not provide the exclusive means for a village to assume control of a bridge. "It is undisputed that the Village planned, financed, and constructed the Brooklea Drive bridge more than 40 years ago and did not advise the Town of the Town's alleged maintenance and repair responsibility until 2010. The record establishes that the Village has exclusive supervision and control over the bridge, and indeed, was the only entity ever to exercise such supervision and control (see Village Law § 6-604)….

Although Village Law § 6-606 provides that a village 'may' obtain control of a bridge by a resolution of its board, it does not provide that a village 'may only' obtain control by that method.... We therefore reject the Village's statutory interpretation, i.e., that a village could unilaterally construct and maintain a bridge only to later disclaim responsibility when repair costs arose."

The Village argues, "Village Law § 6-604 ... does not allocate responsibility for bridges based upon which municipality built the structure.... The only way the Village of East Aurora could assume the responsibility for the structure at-issue ... is by following the affirmative procedures set forth in Village Law § 6-606. The Fourth Department's flawed statutory construction alters the general statutory framework of this State that establishes the cost allocation as between towns and villages for the care and upkeep of bridges and culverts and leads to unjust discrimination that unduly burdens the Village."

For appellant Village of East Aurora: Paul D. Weiss, Kenmore (716) 873-8833
For respondent Town of Aurora: Edward J. Markarian, Buffalo (716) 856-3500

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To be argued Thursday, October 11, 2018 (arguments begin at noon)

No. 118 Clement v Durban

Charmaine Clement brought this personal injury suit against the New York Police Department, the City of New York, and officer Thomas Durban, alleging she was injured in 2010 when her car was rear-ended by a police vehicle driven by Durban as she was stopped at a red light in Brooklyn. While her suit was pending, Clement relocated from Queens to Georgia, and the City defendants moved pursuant to

CPLR 8501(a) and 8503 for an order requiring her to post security of $500 to cover costs. Under CPLR 8101, the prevailing party in a civil suit is generally entitled to recover costs from the loser. CPLR 8501(a) provides that out-of-state plaintiffs who sue in New York courts may be required to post security for the costs for which they would be liable if they lose their case; and CPLR 8503 sets the amount of the security at $500 in New York City and $250 in the rest of the state. Clement opposed the motion, contending that CPLR 8501(a) and 8503 violate the Privileges and Immunities Clause, which provides, "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States" (US Const, art IV, § 2).

Supreme Court rejected Clement's constitutional claim and granted the City's motion to require her to post security, finding the statutes do not bar access to New York courts by non-residents on reasonable terms.

The Appellate Division, Second Department affirmed, saying the challenged statutes "do not deprive noncitizens of New York of reasonable and adequate access to New York courts. The requirement that a nonresident plaintiff who has not been granted permission to proceed as a poor person post the modest sum of $500 as security for costs is reasonable to deter frivolous or harassing lawsuits and to prevent a defendant from having to resort to a foreign jurisdiction to enforce a costs judgment.... If the subject lawsuit is successful, the plaintiff's security is returned to him or her." It said the statutes "do not impose higher costs on nonresident plaintiffs. Rather, they merely require nonresident plaintiffs, who are unlikely to have any attachable assets in New York, to post security for costs. Once his or her lawsuit is brought to a conclusion, a nonresident plaintiff is in the same position as a resident plaintiff."

Clement argues, "Protecting federalism and delineating the rules by which the several States interact with one another, the Constitution prohibits discrimination by one State against the citizens of another State.... By compelling out-of-state plaintiffs (but no one else) to post security for costs at the request of a defendant, CPLR Article 85 unquestionably facially discriminates against the residents of other States by compelling them to act to their detriment in a manner not required of residents of this State. It is thus presumptively constitutionally offensive." If she wins her suit and the security bond is returned, she "nevertheless has suffered discrimination" because the statutes "compelled her to give the State an involuntary loan. She was deprived of access to the funds ... for an indefinite period (typically, many years)." If she loses and is required to pay costs, then she "has been compelled ... to pay those costs far earlier than a resident plaintiff would have. Her non-residency significantly accelerated her obligations."

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For respondents Durban et al: Assistant Corporation Counsel MacKenzie Fillow (212) 356-4378

State of New York
Court of Appeals

To be argued Thursday, October 11, 2018 (arguments begin at noon)

No. 119 People v Rohan Manragh, Jr.

Rohan Manragh, Jr. was arrested in Suffolk County for allegedly striking a woman in the face and pushing her to the ground, among other things, in violation of an order of protection in 2012. Prior to grand jury proceedings, Manragh gave the District Attorney's Office a sworn statement in which a woman said the complainant had made statements to her that cast doubt on Manragh's guilt. Manragh asked the prosecutor to present the woman to the grand jury as a potential witness pursuant to CPL 190.50(6), which provides that a defendant "may request the grand jury ... to cause a person designated by him to be called as a witness in such proceeding. The grand jury may as a matter of discretion grant such request and cause such witness to be called...." The prosecutor declined, and the grand jury indicted Manragh on charges that included first-degree criminal contempt.

Suffolk County Court denied Manragh's motion to dismiss the indictment, finding that the prosecutor's exclusion of the witness "did not undermine the integrity of the grand jury nor render the proceedings defective.... [T]he proposed witness was not a witness to any of the relevant events leading to the charges contained in the indictment, and further, her testimony would have consisted almost entirely of hearsay.... As such, the proffered testimony was not competent evidence for the grand jury's consideration, and the prosecutor's decision to exclude it was appropriate and entirely within her discretion." Manragh later accepted a plea deal in which he pled guilty to the contempt charge in exchange for a sentence of two to four years. The court denied his subsequent motion to withdraw his plea, finding it was knowing and voluntary.

The Appellate Division, Second Department affirmed. "By pleading guilty, defendant forfeited his contention that his motion to dismiss the indictment should have been granted on the ground that the fact-finding process of the grand jury was impaired," it said, citing People v Hansen (95 NY2d 227 [2000]." In Hansen, the Court of Appeals identified a "critical distinction ... between defects implicating the integrity of the process, which may survive a guilty plea, and less fundamental flaws, such as evidentiary or technical matters, which do not."

Manragh argues, "since the grand jury was not permitted to vote on whether to hear [his witness's] testimony, the authority granted to the grand jury pursuant to CPL 190.50(6) was usurped by the prosecutor and the integrity of the grand jury proceeding impaired," and so the indictment should have been dismissed. He says the claimed "misconduct" in his case, "unilaterally excluding" his witness's testimony, "was error that impaired the integrity of a grand jury proceeding," and was thus of a kind that survives a guilty plea under Hansen.

For appellant Manragh: Thomas E. Scott, Melville (631) 673-6670
For respondent: Suffolk County Assistant District Attorney Caren C. Manzello (631) 852-2500