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 Wednesday, November 13, 2013

No. 226 People v Torrel Smith

Torrel Smith was charged with robbing a man at gunpoint in Yonkers in August 2009. The victim gave police a description of the robber, identified Smith in a lineup when he was arrested six days later, and identified him again at trial as the man who robbed him. The victim recounted his initial description of the robber during his trial testimony. The prosecution sought to present police testimony about the description the victim gave them immediately after the robbery "for the purpose of allowing the jury to assess whether or not the witness had an opportunity to observe the crime."

Supreme Court granted the prosecution request, ruling the police testimony was admissible "since ID is the issue in this case.... It is relevant pursuant to People v Huertas (75 NY2d 487 [1990]," which allowed a crime victim to testify about the initial description of her assailant that she had given to police. At Smith's trial, two police officers then recounted the initial description the robbery victim had given them. Smith was convicted of first-degree robbery and sentenced to 15 years in prison.

The Appellate Division, Second Department affirmed. It said Smith's claim that the police testimony served to improperly bolster the victim's identification testimony was unpreserved and, in any event, was meritless. "The challenged testimony was properly admitted to assist the jury in evaluating the complainant's opportunity to observe the perpetrator at the time of the crime and the jury was instructed to consider the testimony for this purpose alone...."

Smith argues that Huertas limits this type of description testimony to crime victims and, "in this one witness identification case," the police testimony about the victim's initial description deprived him of a fair trial. During the testimony of the two officers and the victim, he says, "the jury heard [the victim's] description of the perpetrator repeated four times.... Once [the victim] recounted the description he gave to police, any relevant, legitimate, nonhearsay testimony sanctioned by Huertas, was accomplished. Further police testimony that repeated the description served but one purpose, which was to buttress the complainant's identification. This amounted to bolstering and as such constituted an impermissible and unwarranted extension of Huertas...."

For appellant Smith: Salvatore A. Gaetani, White Plains (914) 286-3400
For respondent: Westchester County Assistant District Attorney Maria I. Wager (914) 995-3497

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To be argued Wednesday, November 13, 2013

No. 227 Caronia v Philip Morris USA, Inc.

Marcia Caronia and two other long-term New York smokers brought this putative class action against cigarette maker Philip Morris USA, Inc. in 2006 in U.S. District Court for the Eastern District of New York, alleging that its products had significantly increased their risk of developing lung cancer, although none of them had been diagnosed with lung cancer. They asserted claims of negligence, strict liability, and breach of the implied warranty of merchantability. Instead of compensatory or punitive damages, they sought to have Philip Morris fund a court-supervised program of medical monitoring for class members, using a recently developed medical surveillance technique known as Low Dose CT Scanning that they said would provide an effective means of detecting lung cancer at an early stage.

U.S. District Court dismissed the negligence and strict liability claims as time-barred, but allowed the plaintiffs to amend their complaint to plead a free-standing equitable claim for medical monitoring. The court subsequently dismissed the breach of warranty claim because "the plaintiffs concede their knowledge of the dangers of cigarettes" and, thus, there was no "implied warranty that Philip Morris breached." The court also dismissed the independent cause of action for medical monitoring, although it predicted that New York courts would recognize such a claim, because the plaintiffs did not allege that the company's failure to produce a safer cigarette is the reason they require a medical monitoring program.

The U.S. Court of Appeals for the Second Circuit affirmed the dismissal of the negligence, strict liability and breach of warranty claims, but found it was unclear whether the independent claim for medical monitoring is viable. "If ... New York recognizes an independent cause of action for medical monitoring, and if, as recognized, that claim is viewed as accruing when an effective monitoring test becomes available -- and if plaintiffs' allegations as to the availability and effectiveness of [Low Dose CT scans] and as to the lack of effectiveness of prior tests are proven -- the statute of limitations likely will not have run on that independent cause of action." The Second Circuit is asking this Court to resolve the issue in a certified question:

"(1) Under New York law, may a current or former longtime heavy smoker who has not been diagnosed with a smoking-related disease, and who is not under investigation by a physician for such a suspected disease, pursue an independent equitable cause of action for medical monitoring for such a disease? (2) If New York recognizes such an independent cause of action for medical monitoring, (A) What are the elements of that cause of action? (B) What is the applicable statute of limitations, and when does that cause of action accrue?"

For appellants Caronia et al: Victoria E. Phillips, Manhattan (212) 388-5100
For respondent Philip Morris: Kenneth J. Parsigian, Boston, Mass. (617) 880-4510

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To be argued Wednesday, November 13, 2013

No. 228 People v Andre Collier

Andre Collier was indicted in 2005 on charges arising from knife-point robberies of five stores in Albany County. He accepted a plea bargain in which he pled guilty to two counts of first-degree robbery in exchange for a promise that he would be sentenced to 25 years on one count and five years on the other. Albany County Court sentenced him as a second felony offender to consecutive terms of 25 years and five years. The Appellate Division, Third Department affirmed on his direct appeal, finding Collier had waived his right to challenge the sentence as harsh and excessive.

Meanwhile, in 2006, the Department of Correctional Services informed County Court that the five-year sentence was illegal because Penal Law § 70.04(3)(a) required a minimum term of ten years on each count. Collier moved to withdraw his guilty plea on the ground that the sentence was illegal. County Court denied the motion. The Third Department modified by vacating the entire sentence and remitting the case to County Court "to either resentence defendant in a manner that ensures that he receives the benefit of his sentencing bargain or permit both parties the opportunity to withdraw from the plea agreement...."

County Court denied Collier's request to withdraw his plea and resentenced him to concurrent terms of 25 years and 10 years. The Appellate Division affirmed, rejecting Collier's claim that the lower court rendered his plea involuntary by resentencing him to 10 years on the second count, which was longer than the five-year term he agreed to in the plea bargain. The Third Department said, "In fact, defendant actually received a lesser sentence under the resentence than the one he agreed to under the plea agreement because County Court directed that the sentences run concurrently, instead of consecutively, thereby reducing his aggregate prison exposure from 30 to 25 years. Thus, defendant received a sentence that was better than 'the benefit of his bargain' upon resentencing, and County Court was not required to allow him to withdraw his plea...."

Collier argues that, "because both sentences were part of Mr. Collier's plea bargain, and the plea bargain cannot be legally fulfilled, both sentences must be vacated and Mr. Collier must be given the opportunity to withdraw his plea in its entirety. Further, prior to accepting a defendant's guilty plea, a court must ensure that the defendant fully understands the consequences of the plea. The court's failure to do so violates the defendant's right to due process because the plea was not knowing, voluntary and intelligent. *See* People v Hill, 9 NY3d 189...." He says that he "is clearly losing a benefit that was expressly promised to him and was a material inducement to his guilty plea: a 5-year sentence on count five, which has now been doubled by the Trial Court to a 10-year sentence despite Mr. Collier's request to withdraw his plea."

For appellant Collier: Claude Castro, Manhattan (212) 810-2710
For respondent: Albany County Assistant District Attorney Steven M. Sharp (518) 487-5460

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To be argued Wednesday, November 13, 2013

No. 229 William J. Jenack Estate Appraisers and Auctioneers, Inc. v Rabizadeh

Albert Rabizadeh made the winning bid of $400,000 by telephone for a 19th century Russian silver-and-enamel covered box at a public auction held in September 2008 by William J. Jenack Estate Appraisers and Auctioneers, Inc., in Chester, New York. When Rabizadeh refused to pay for it, Jenack brought this breach of contract action against him. Rabizadeh raised a defense based on the statute of frauds, contending that the sale documents provided by Jenack did not comply with General Obligations Law § 5-701(a)(6) because they did not include the name of the buyer or "the name of the person on whose account the sale was made." Because he was participating by telephone, Rabizadeh submitted in advance an absentee bid form that contained his name and address, credit card number, items he intended to bid on, and his signature. The "clerking sheets," which recorded the winning bid for each item as the auction was conducted, identified the bidder and seller by number. The seller of the Russian box was identified only as consignor number 428.

Supreme Court granted Jenack's motion for summary judgment on the issue of liability, saying "the designation of the consigner and the bidder ... in the clerking sheets by reference to the number assigned to each was sufficient to satisfy" the written memorandum requirement of section 5-701(a)(6). It said Jenack established that Rabizadeh "requested and received permission to bid at the auction by telephone, that the defendant did in fact bid ... and was the winning bidder on [the Russian box] in the amount of $400,000, and that the defendant refused to pay for the item despite due demand." Jenack was awarded $402,398 after a non-jury trial.

The Appellate Division, Second Department reversed and dismissed the suit, holding the statute "requires that the necessary memorandum, be it in one writing or multiple writings, reveal the identity of, not merely a number assigned to, the parties to the contract." The absentee bid form and clerking sheets adequately identified the purchaser, but not the seller because Jenack "failed to produce any writing identifying consignor '# 428' by name...," it said. "While it may be true that auction houses commonly withhold the names of consignors..., this court is governed not by the practice in the trade, but by the relevant statute.... [T]he statute clearly and unambiguously requires that the '*name* of the person on whose account the sale was made' ... be provided in the memorandum, which plainly means that the memorandum must contain information revealing the identity of that party."

Jenack argues that the clerking sheets constitute a valid and enforceable sale agreement for the Russian box under Hicks v Whitmore (12 Wend 548 [1834]), which held that the language of a predecessor statute did not require "the name of the vendor or owner, but of the person on whose account the sale was made, which may well be complied with, by inserting the name of the agent, factor or consignee" of the owner. In the same way, it says, "[i]nsertion of a consignor's number or other identifying mark decipherable by reference to other records would suffice... The clerking sheets and consignor number list, together, satisfy the statute." He also argues that inclusion of the name of the Jenack auction house on the clerking sheets, as agent for the owner, satisfies the statute of frauds.

For appellant Jenack: Benjamin Ostrer, Chester (845) 469-7577
For respondent Rabizadeh: Michael S. Winokur, Flushing (718) 264-7400

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To be argued Wednesday, November 13, 2013

No. 230 People v Cavell Craig Tyrell
No. 231 People v Cavell Craig Tyrell

Cavell Craig Tyrell is challenging the validity of his guilty pleas to two misdemeanor marijuana charges in separate cases in Manhattan, arguing that the records of the plea proceedings do not establish that his pleas were knowing, intelligent and voluntary.

Case No. 231 arose in February 2009, when Tyrell was charged with fourth-degree sale and fifth-degree possession of marijuana. At his arraignment in Criminal Court, Tyrell's attorney waived "the readings, not the rights" and the prosecutor offered a "plea to the charge" in exchange for "time served." After the prosecutor rejected his request for an adjournment in contemplation of dismissal, defense counsel said, "We have a disposition. At this time [Tyrell] authorizes me to ... enter a plea of guilty" to fifth-degree possession. The court replied, "Time served. Enter judgment." No questions were asked of Tyrell and he did not speak during the proceeding.

Case No. 230 arose in October 2009, when Tyrell was charged with fourth-degree sale of marijuana. At arraignment, his attorney waived "the readings, not the rights" and the prosecutor offered a "plea to the charge" with a sentence of 15 days, which defense counsel rejected. The court denied defense counsel's request for a sentence of time served, but said it would "give him 10 days" for a guilty plea. Defense counsel said Tyrell was willing to accept the offer and authorized him to enter the plea. The court described the terms of the deal directly to Tyrell -- a plea to fourth-degree sale for a jail sentence of 10 days, a mandatory surcharge, and a 6-month license suspension -- and asked, "Is that what you want to do?" Tyrell replied, "Yes, your honor." The court then asked, "Is it true that on October 15, 2009 in New York County at 25 Sheraton Square that you waited with an undercover officer while someone else went to get marijuana that was exchanged with that individual, is that true?" Tyrell replied, "Yes, sir."

The Appellate Term, First Department affirmed both convictions, ruling his challenges to the adequacy of the plea allocutions were unpreserved, since he did not move to withdraw the pleas, and also ruling his claims were meritless. In Case No. 231, the court said his "counseled guilty plea" -- in satisfaction of a charge that was "potentially punishable by a one-year jail sentence -- was knowing, intelligent and voluntary. Further, a plea of guilty will be sustained in the absence of a factual allocution where, as here, there is no indication" the plea "was improvident or baseless." It said Tyrell "clearly understood the nature of the charges to which he was pleading and willingly entered his plea to obtain the benefit of the bargain he had struck."

Tyrell argues that preservation is not required where "the face of the allocution itself" casts doubt on the voluntariness of the plea. On the merits, he argues in Case No. 231 that, because no questions were posed to him and he did not speak during the plea proceeding, "the record does not demonstrate that appellant understood his rights or court rules or courtroom procedure. Nor does the record establish that appellant was aware of the possible sentence he was facing or the consequences of his guilty plea," or that he "understood or was even aware of the important constitutional rights he was waiving by virtue of his guilty plea."

For appellant Tyrell: Harold V. Ferguson, Jr., Manhattan (212) 577-3548
For respondent: Manhattan Assistant District Attorney Ryan Gee (212) 335-9000