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 Thursday, January 8, 2015 (arguments begin at 10 a.m.)

No. 9 Vargas v City of New York

Jose Vargas was arrested in a drug buy-and-bust operation in Brooklyn on September 1, 2006, and was taken to the 72nd Precinct. A Type I diabetic who relied on daily insulin injections to control his blood glucose level, Vargas said he carried his insulin and syringes with him at all times in a black bag, but the bag was taken from him at the time of his arrest. He said he asked police officers for his insulin at least six times that night, at the precinct and later at Kings County Central Booking, but was disregarded. He was arraigned on September 3 and was remanded to custody when he could not post bail of $2,000. On September 4, Vargas suffered a seizure in his cell at Central Booking and was taken to Long Island College Hospital, where he was diagnosed with diabetic ketoacidosis, a common complication of a lack of insulin. He suffered multiple seizures and was in a coma for eight or nine days, which left him with permanent brain damage. He was released from custody on September 28, after pleading guilty to criminal facilitation in return for a conditional discharge.

Vargas filed a notice of claim with the City, which did not mention a denial of medical care, then brought this action against the City and individual officers for personal injury and civil rights violations under 42 USC § 1983, among other things. In a cause of action for "policy of non-feasance in the protection of plaintiff's civil rights," the complaint alleged the defendants had "deprived [Vargas] of necessary medical treatment." The City moved to dismiss the civil rights claim for failure to state a cause of action. Supreme Court denied the motion, and Vargas went to trial on the theory that the City deprived him of necessary medical care by denying him insulin while he was in police custody. The jury found the City did not have a "custom and/or policy of depriving prisoners of medical care," but determined that the denial of medical care to Vargas did "demonstrate a custom and/or policy of [the City] that violates civil rights." It found Vargas's injuries were a result of the defendants' negligence and awarded him $17.6 million. Supreme Court also awarded him $175,000 in attorneys' fees.

The Appellate Division, Second Department reversed, ruling the civil rights claims under 42 USC § 1983 should have been dismissed for failure to state a cause of action. "To hold a municipality liable under § 1983 for the conduct of employees below the policymaking level, a plaintiff must show that the violation of his or her constitutional rights resulted from a municipal custom or policy.... Here, the complaint failed to allege any facts from which it could be reasonably inferred that the defendants had a policy or custom of depriving medical treatment to persons in police custody...."

Vargas argues that he "certainly alleged deprivation of necessary medical care in the complaint; defendant was fully informed during pre-trial proceedings of the nature of the claim and its essential elements -- that the refusal to permit him access to insulin while in defendant's custody caused diabetic ketoacidosis -- and ... mounted a vociferous defense at trial.... [T]his Court should reverse and hold that the pleadings, when supplemented by the pre-trial discovery afforded the City, sufficed to state a cognizable claim for deprivation of medical care...."

For appellant Vargas: Brian J. Isaac, Manhattan (212) 233-8100
For respondent City: Assistant Corporation Counsel Richard Dearing (212) 356-2500

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No. 10 People v Steven Repanti

Steven Repanti was accused by a neighbor, Carol Goldman, of trying to knock her down a stairway at the Spook Rock Senior Complex in Suffern in 2009. She told police that, as she started up the stairs, Repanti rushed down and bumped her hard with his shoulder, knocking her backward. He was charged with third-degree attempted assault in a misdemeanor information, which alleged that he "purposefully with force used his shoulder to bump into deponent in an attempt to knock deponent down the stairs" and that he acted "with intent to cause physical injury." On the eve of trial, the prosecutor filed a superseding information to add a charge of second-degree harassment. In support of the new charge, the information alleged that Repanti "did purposefully, with force, use his shoulder to bump into Ms. Carol Goldman in an attempt to knock Ms. Goldman down the stairs" and that he acted "with intent to harass, annoy, or alarm" her.

Repanti was convicted on both counts after a nonjury trial in the Town of Ramapo Justice Court and was sentenced to one year of probation and a $250 fine. On appeal, he argued that he could not properly be convicted of both charges because they were based on precisely the same conduct and the only difference between them was the intent element, with attempted assault requiring an intent to cause physical injury and harassment an intent to harass, annoy or alarm.

Appellate Term, Ninth and Tenth Judicial Districts affirmed, rejecting his claim that harassment in the second degree is a lesser included offense of attempted assault in the third degree. "This argument fails, as the Court of Appeals has held that harassment is not a lesser included offense of assault, noting that harassment requires proof of an intent to harass, annoy or alarm, an element that is not required to establish assault (People v Moyer, 27 NY2d 252 [1970]). The foregoing reasoning must extend to the crime involved herein, attempted assault."

Repanti argues, "[T]he 'Stanfield rule' [People v Stanfield (36 NY2d 467)] requires that the charge of harassment in the second degree be treated as a lesser included offense of attempted assault in the third degree because both rely on evidence of the very same conduct, the only difference being whether appellant acted with intent to harass, annoy or alarm, or to cause physical injury. In such a case, the two charges contained in a single instrument must be considered in the alternative.... Quite obviously..., a defendant could not be found guilty of both charges, because one cannot commit a single physical act while having two inconsistent intentions."

For appellant Repanti: William A. Gerard, Palisades (845) 365-3121
For respondent: Rockland County Asst. District Attorney Anthony R. Dellicarri (845) 638-5001

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To be argued Thursday, January 8, 2015 (arguments begin at 10 a.m.)

No. 12 Matter of Veronica P. v Radcliff A. *(papers sealed)*

In September 2009, 87-year-old Veronica P. filed a family offense petition against Radcliff A., an adult nephew who lived with her in her Manhattan apartment, alleging that he "grabbed and pushed her" during a brief altercation in August. She also alleged that "he is constantly under the influence of alcohol, he frequently screams and curses at her and tells her she cannot put him out of the home," among other things.

Family Court determined that Radcliff had committed acts that constituted harassment in the second degree and granted Veronica a two-year order of protection directing him to stay away from her home and refrain from assault, intimidation, threats and other offenses against her. Radcliff appealed, but work on it was delayed by the illness of his attorney. The order of protection expired in February 2013.

The Appellate Division, First Department dismissed his appeal as moot in October 2013, saying, "Because the order of protection has expired, this appeal is moot...."

Radcliff argues that his appeal from the order of protection did not become moot when the order expired because the underlying factual finding that he committed a family offense created a "stigma" that will have "enduring consequences" for him in the future. "The existence of an order of protection remains both a liability for future adjudication and a blot on the good name of the Family Court respondent when the order expires.... It is self-evident that adjudication of an act of domestic violence against an 87-year-old woman is a stigma." He points out that prior findings of domestic violence are a factor in custody determinations under the Domestic Relations Law and that orders of protection are entered into a statewide computer registry, which is searchable by courts and probation departments, and the orders are not removed when they expire.

For appellant Radcliff A.: George E. Reed, Jr., White Plains (914) 946-5000
For respondent Veronica P.: Eric Nelson, Staten Island (718) 356-0566