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 Monday, January 4, 2016

No. 2 People v Anthony Jones

Anthony Jones was charged with possession and sale of crack cocaine based on two encounters with police in Manhattan in 2011. He pled guilty to criminal possession and sale of a controlled substance in the third degree in exchange for concurrent terms of six months in jail. At sentencing, defense counsel asked Supreme Court to defer imposition of the mandatory surcharge. The court refused, saying, "I can't do it, the law doesn't allow it. If you look at the statute and cases, clearly, I can't do it.... If I could, I would." The court imposed the $300 mandatory surcharge in each case.

The Appellate Division, First Department affirmed. "Since defendant was sentenced to a term of incarceration of longer than 60 days (see Penal Law § 60.35[8]), he was required to seek relief from his mandatory surcharge payments by way of a CPL 420.10(5) motion for resentencing. Defendant's claims that he was entitled to a financial hardship hearing pursuant to CPL 420.40, and that the hearing should have been held at the time of his sentencing, are not supported by the applicable statutes. Rather, any application for relief from his surcharges is to be entertained in postsentence proceedings (see People v Bradley, 249 AD2d 103 [1st Dept 1998], lv denied 92 NY2d 923 [1998]...)."

Jones relies on CPL 420.40, which states that it "governs the deferral of the obligation to pay all or part of a mandatory surcharge" imposed under Penal Law § 60.35(1). Although it creates a specific procedure for defendants sentenced to less than 60 days, he says it "does not limit the availability of hardship hearings to those defendants. Indeed, since the collection of fees from defendants sentenced to more than 60 days is governed by [Penal Law] § 60.30, which gives full civil authority to courts charged with collecting those surcharges..., those courts are ... statutorily authorized to conduct hardship hearings at the time of the imposition of the surcharge." He argues that CPL 420.10(5), relied on by the Appellate Division, "applies only where a defendant is unable to pay a fine, restitution or reparation imposed as part of the sentence and does not specify that it applies to surcharges." He says, because the sentencing court "erroneously believed that there was no statutory authority to defer imposition of a mandatory surcharge" in his case, "appellant's right to due process at sentencing was violated."

For appellant Jones: Kristina Schwarz, Manhattan (212) 577-3587
For respondent: Manhattan Assistant District Attorney Sheila L. Bautista (212) 335-9000

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No. 3 Sean R. v BMW of North America, LLC

Sean R. was born in 1992 with severe birth defects, including mental retardation, cerebral palsy and a congenital heart defect. His parents attribute his condition to in utero exposure to gasoline vapors his mother inhaled during the first trimester of her pregnancy while driving her BMW 525i sedan. She took the car to Hassel Motors in March 1991 after noticing an odor of gasoline, but no repairs were made. She returned in November 1991, when she was about 14 weeks pregnant, and Hassel found gasoline was leaking into the engine compartment from a split fuel line and replaced the line. In 2008, when Sean was 15, his family brought this action against Hassel, BMW (US) Holding Corp. and a subsidiary, and Martin Motor Sales, the dealer that sold them the car.

Sean served notice of intent to present six expert witnesses, including Dr. Shira Kramer and Dr. Linda Frazier, who said they believed, "to a reasonable degree of scientific certainty," that gasoline vapor and the chemical components of gasoline, particularly toluene and other solvents, are causally related to an elevated risk of birth defects among children exposed during early pregnancy.

Supreme Court granted a defense motion to preclude the testimony of Drs. Kramer and Frazier, finding that their opinions "do not comport with methodologies prevailing in the" scientific community and that they provided insufficient support for their conclusion. The experts "did not cite a single scientific publication that establishes a causal link between exposure to gasoline vapors during pregnancy and the birth defects found in Sean R.," the court said, noting that federal and California agencies that publish scientific analyses of toxic agents had not found gasoline to be a developmental toxin. "Contrary to established scientific practices, Drs. Kramer and Frazier pass over these negative results in silence. Instead, they claim to have found a causal link between gasoline and developmental outcomes that escaped other scientists."

The Appellate Division, First Department affirmed. "[T]he medical and scientific literature submitted by plaintiffs' experts does not support the proffered theory that exposure to gasoline fumes caused plaintiff's birth defects. Rather, the literature shows that some of the constituent chemicals contained in gasoline ... can cause birth defects. However, plaintiff failed to show how exposure to those constituent chemicals, constituted as unleaded gasoline vapors, could have caused his injuries," the court said, citing Parker v Mobil Oil Corp. (7 NY3d 434).

Sean argues the lower courts violated his "right to present qualified and competent proofs to a jury" by precluding his experts, whose "qualifications in epidemiology and occupational medicine went unchallenged." He says the courts improperly credited the "flawed" analyses of defense experts and misapplied Parker and Frye. "[T]he standards in Parker are amply satisfied by the court-approved, generally accepted methods Plaintiff's experts faithfully applied, and the wealth of record evidence and peer-reviewed literature supporting their causal conclusions." At the least, he says, he is entitled to a Frye hearing.

For appellant Sean R.: Steven J. Phillips, Manhattan (212) 388-5100
For respondent Martin Motor Sales: Leslie McHugh, Melville (631) 694-0033
For respondent Hassel Motors: Haydn J. Brill, Manhattan (212) 374-9101
For BMW respondents: Philip C. Semprevivo, Jr., Manhattan (646) 218-7560

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To be argued Monday, January 4, 2016

No. 4 Selective Insurance Company of America v County of Rensselaer

This insurance dispute stems from a federal class action brought against Rensselaer County in 2002 by Nathaniel Bruce and other plaintiffs seeking damages for inmates of the Rensselaer County Jail who were strip searched after being charged with misdemeanors or violations since June 1999. They alleged the County had a policy of strip searching everyone placed in the jail, regardless of the charges, in violation of 42 USC § 1983 and a Second Circuit ruling that persons charged with such minor offenses cannot be strip searched without a particularized suspicion that they possessed weapons or contraband.

During the period covered by the class action, 1999 to 2002, Selective Insurance Company of America and its affiliates insured the County under a series of four identical police professional liability policies. The policies applied a $10,000 deductible to "all damages ... sustained by one person or organization as the result of any one occurrence." They defined "occurrence" as "an event, including continuous or repeated exposure to substantially the same general harmful conditions, which results in ... 'personal injury' ... by any person or organization and arising out of the insured's law enforcement duties. All claims arising out of (a) a riot or insurrection, (b) a civil disturbance resulting in an official proclamation of a state of emergency, (c) a temporary curfew, or (d) martial law are agreed to constitute one 'occurrence.'"

When the class action was settled in 2004, the federal district court approved payments of $5000 to Bruce and $1000 to each of the other 806 class members, a total of $811,000, and awarded the plaintiffs $442,702 in legal fees and costs, all of which Selective paid. The insurer sought reimbursement from the County for all of its payments to the plaintiffs as well as $314,551 of its own legal costs, a total of nearly $1.6 million, contending that a separate deductible applied to each of the 807 class members. The County responded that Selective was entitled to just one $10,000 deductible because the damages were caused by a single strip search policy and, thus, were the result of a single "occurrence" within the meaning of the insurance contracts. Selective then brought this breach of contract action against the County.

Supreme Court granted partial summary judgment to both parties. It held for Selective on the issue of deductibles, ruling the County owed a deductible for damages paid to each plaintiff. It said the policy language was unambiguous in stating that the deductible "applies to all damages ... sustained by one person or organization as the result of any one occurrence." It said plaintiffs "were searched on multiple dates, and each search involved the separate act by an agent of the defendant. They were not related to each other except for a remote or 'common originating' cause of the defendant's strip search policy." It ruled for the County on the allocation of legal fees, saying, "Silence on this issue in the policy creates ambiguity, which should be resolved against the drafting party." Rather than allocate the legal fees pro rata to each claim, it allocated all of them to Bruce's claim and limited Selective's recovery of legal fees to the deductible attributable to his claim. The ruling allows Selective to recover no more than $816,000, consisting of the $10,000 deductible for Bruce's claim and the amount actually paid to the other 806 claimants.

The Appellate Division, Third Department affirmed on the opinion of Supreme Court.

For appellant-respondent Rensselaer County: Melissa J. Smallacombe, Albany (518) 862-1386
For respondent-appellant Selective Insurance: Richard A. Galbo, Buffalo (716) 332-0151