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, March 31, 2016

No. 67 People v Joel Joseph

Based on information from a confidential informant that Siffreido Gonzalez was trafficking narcotics from his apartment in lower Manhattan, the New York Drug Enforcement Task Force began an investigation in 2009, staking out his apartment and monitoring a video camera hidden in the hallway outside his door. About five months later, in February 2010, detectives saw Gonzalez leave his apartment with a white plastic Duane Reade bag, walk to a nearby parking garage, and drive out in his black BMW. The detectives followed him up to Harlem, where he double parked and turned on his hazard lights. Joel Joseph approached the car within minutes, Gonzalez lowered a window and spoke with him briefly, then opened the hatchback. Joseph went to the rear of the car and took out the shopping bag, put it in a jacket pocket, and walked away. A detective in plainclothes followed Joseph into the St. Nicholas Houses, then tried to stop him by grabbing his hair. Joseph ran away, with the detective shouting "Police, stop." The detective tackled Joseph and the men struggled until two more detectives arrived to handcuff Joseph. They found 350 grams of cocaine in the white plastic bag.

Supreme Court denied Joseph's motion to suppress the cocaine, rejecting his claim that the search was invalid because the police lacked probable cause to arrest him. The detectives had "reasonable cause" to believe Gonzalez was dealing drugs based on the informant and their own surveillance, it said, and his interaction with Joseph entitled them "to conclude that they had witnessed a drug transaction," providing probable cause for the arrest. Even if they did not have probable cause when Joseph took the shopping bag, "they certainly had reasonable suspicion that a crime had occurred, thus warranting the pursuit and forcible stop of the defendant.... That reasonable suspicion ripened into probable cause after the defendant's flight and subsequent struggle with the officers." Joseph later pled guilty to third-degree criminal possession of a controlled substance and was sentenced to six years in prison.

The Appellate Division, First Department affirmed, saying the informant provided reliable information about Gonzalez and the officers' surveillance "established, circumstantially, that the drug activity ... continued up to the time of [Joseph's] arrest.. Accordingly, there was sufficient evidence that the informant's information had not become stale...." Finding there was probable cause for the arrest, it said, "Although, if viewed in isolation, the generic bag could have been innocuous, it clearly indicated the presence of a drug transaction when viewed in context." Even if the officers lacked probable cause, they had reasonable suspicion justifying the forcible stop, it said. Joseph's "flight from the officers, after they had identified themselves, and his struggle when they tried to stop him, elevated the officers' suspicions and provided probable cause regardless of whether it already existed...."

Joseph argues the officers had no authority to arrest or forcibly stop him because they had "at most a 'founded suspicion' of criminality" when he took the Duane Reade bag, "the sort of bag law-abiding New Yorkers carry every day." There is no evidence the police "had recovered any drugs" while investigating Gonzalez, "seen any drugs, or intercepted any communications about drugs," so they could not "establish that the informant's tips ... were not stale," he says. There is no evidence they had seen or heard of Joseph prior to his arrest, and they did not hear his conversation or see him give Gonzalez money before he took the bag. He says any founded suspicion or even reasonable suspicion officers might have had "was not elevated to probable cause to arrest when [he] ran after being followed at night by a plainclothes detective who grabbed his hair" because his flight "was precipitated by [the detective's] use of force" and was not "evidence of consciousness of guilt," but of fear that he might be robbed.

For appellant Joseph: Arthur H. Hopkirk, Manhattan (212) 577-3669
For respondent: Manhattan Assistant District Attorney Lindsey Richards (212) 335-9000

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To be argued Thursday, March 31, 2016

No. 68 People v Jonathan J. Connolly *(papers sealed)*

Jonathan Connolly was arrested for breaking into his girlfriend's apartment in the Village of LeRoy, Genesee County, in 2008. He set small fires on the kitchen stove, a couch, living room curtains, various cushions and a box spring. He swung a knife at a police officer who was trying to enter the apartment, and also broke windows and damaged other property. A fire company quickly extinguished the fires. Connolly pled guilty to first-degree attempted assault and third-degree attempted arson and was sentenced to eight years in prison.

The issue of restitution was assigned to a judicial hearing officer (JHO) for a hearing in 2009. The prosecutor presented testimony by an adjuster for the Erie Insurance Company, which had settled the building owner's claims for property damage and lost rental income, along with documentary evidence. Based on the JHO's report, County Court ordered Connelly to pay $31,403.49 in restitution. The Appellate Division, Fourth Department ruled County Court "erred in delegating its responsibility to conduct the restitution hearing to a judicial hearing officer," vacated the order, and remitted the matter to County Court "for a new hearing to determine the amount of restitution."

At the County Court hearing on remittal in 2013, the prosecutor presented the transcript and exhibits from the JHO's hearing in 2009, then rested. The court overruled defense objections and said, "This court is not restricted at a restitution hearing by the traditional rules of evidence, and may consider reliable hearsay...." It cited Penal Law § 60.27(2), which states a court must conduct a hearing if "the record does not contain sufficient evidence" to determine the amount of restitution "or upon request by the defendant;" and CPL 400.30(4), which states, "Any relevant evidence, not legally privileged, may be received regardless of its admissibility under the exclusionary rules of evidence." The court ordered Connolly to pay $31,796.69 in restitution.

The Appellate Division affirmed, rejecting Connolly's claim that the 2013 hearing was inadequate because no witnesses were called. The exhibits and "the transcript of the sworn testimony" taken at the JHO's hearing in 2009, "which was subject to cross-examination..., constitutes 'relevant evidence' ... [that] may be received 'regardless of its admissibility under the exclusionary rules of evidence'...," the court said, citing CPL 400.30(4).

Connolly argues, "County Court did not fulfill its obligation to conduct a hearing.... When a sentencing court impermissibly delegates its responsibility to conduct a hearing, and then holds a later proceeding at which the transcript of the unlawfully delegated hearing is received in evidence in lieu of testimony from the witnesses who appeared before the JHO, the court makes a mockery of the rule that it must conduct the hearing." He says, "The court circumvented the remittal and the statutory duty to conduct a hearing." He also argues, "The unjustified delay in conducting a proper reparation hearing violated appellant's right to be sentenced without unreasonable delay."

For appellant Connolly: Alan Williams, Buffalo (716) 853-9555
For respondent: Genesee County Asst. District Atty. William G. Zickl (585) 344-2550 ext 2495

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To be argued Thursday, March 31, 2016

No. 69 People v Ronald D. Rossborough

Ronald Rossborough was charged in 2010 with engaging in a criminal scheme in several Western New York and Southern Tier counties, using stolen checks to buy jewelry, stereo equipment and other expensive merchandise at stores, then returning the items for cash refunds. In Wyoming County, he pled guilty to a felony count of third-degree grand larceny in exchange for a sentence of three to six years in prison, to run concurrently with sentences imposed in other jurisdictions, and an order to pay $2,500 in restitution.

At his plea proceeding in Wyoming County Court, Rossborough orally agreed to waive his right to be present at his sentencing after the court told him he had "an absolute right to be here for the sentencing." He also executed a written waiver of his right to appeal, a waiver the judge explained would include "anything surrounding your arrest, your conviction here today or the sentence that I impose as long as I stay within the agreed time." The court later imposed the promised sentence in his absence.

On appeal, Rossborough contended the court violated CPL 380.40 by sentencing him in absentia. The statute states, "The defendant must be personally present at the time sentence is pronounced," but contains an exception allowing a defendant's written waiver of the right to be present "[w]here sentence is to be pronounced for a misdemeanor or for a petty offense."

The Appellate Division, Fourth Department affirmed, saying, "Defendant's valid waiver of the right to appeal encompasses his contention that County Court erred in sentencing him in absentia.... In any event, defendant's contention lacks merit. The record establishes that defendant waived his right to be present at sentencing, having specifically requested at the plea proceeding that he be permitted to waive his personal appearance at sentencing...."

Rossborough argues that "a plain reading of the statute prohibits courts from allowing a defendant to waive his presence for sentencing on a felony." The terms of CPL 380.40 "are plain, clear, and unambiguous, and nothing is left for interpretation: the statute requires the presence of a defendant for sentencing proceedings, and the only exception to this rule applies to misdemeanors and petty offenses -- not felonies."

For appellant Rossborough: Christine Seppeler, Rochester (315) 573-4077
For respondent: Wyoming County Assistant District Attorney Eric R. Schiener (585) 786-8822

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To be argued Thursday, March 31, 2016

No. 62 People v Tyrone D. Manor

Tyrone Manor was charged with intentional murder in the second degree for killing Desiree Curry during a dispute in Rochester in October 2008. He told the police the incident was "a mistake" and said Curry threw garden shears at him, hitting him in the leg, and he threw them back at her, piercing her back. He told officers "I'm no killer" and "I wasn't thinking." On the eve of his bench trial Manor was offered two alternative plea bargains: plead guilty to intentional murder in exchange for a maximum term of 20 years to life, or plead to first-degree manslaughter for a maximum sentence of 25 years in prison.

After meeting with his lawyers and relatives, but not his wife or children, Manor pled guilty to intentional murder. He told County Court, "We got into a discussion. She shot some shears at me. I wasn't thinking. I shot them back and they went in her back." The court asked, "Did you intend to cause her death?" He said, "No." The court explained it could not accept the plea unless it was satisfied that he intended to kill Curry, then said, "Well, Mr. Manor, I'm not putting words in your mouth. You either intended to cause her death or you didn't." Manor replied, "I intended." The court asked, "You intended to cause her death?" He replied, "Yes." He said no one forced him to plead guilty and he was not impaired by medication or alcohol.

Manor's two attorneys moved to vacate his plea and filed affidavits detailing their views of his impaired mental and physical condition at the time of the plea, saying they were surprised by his decision and describing him as "stammering" and "robotic, uncommunicative and weird." They also filed an affidavit from a psychiatrist who examined Manor and concluded that his decision to plead was affected by "extraordinary pressure from family members" and that he was likely impaired by Cognac and marijuana he consumed shortly before arriving at the court house.

County Court denied the motion without asking Manor any questions. "I really don't see an issue for a factual hearing and I'm satisfied that the plea ... was a knowing, voluntary and intelligent waiver of his rights to a trial on the day of trial," it said. It sentenced him to 18 years to life.

The Appellate Division, Fourth Department affirmed, saying Manor's "claims that he was coerced by family members into pleading guilty, that he was intoxicated during the plea proceeding, and that he did not understand the nature of the plea or its consequences are belied by the record of the plea proceeding.... [T]he court did not abuse its discretion in denying his motion without a hearing" because it gave him a "reasonable opportunity to present his contentions." It found his attorneys provided "meaningful representation."

Manor argues the trial court erred in summarily denying his motion to withdraw his plea. "The uncontested factual information contained in [the] motion ... was sufficient alone to establish that [his] plea was not a knowing and voluntary choice." Alternatively, he argues "it was an abuse of discretion for the trial court to deny [the] motion ... absent any inquiry to determine what impact any undue pressure or mental impairment had on [his] decision to plead guilty to intentional murder, and the matter should be remitted to the trial court to conduct a hearing." He also argues he was denied effective assistance of counsel.

For appellant Manor: Kimberly F. Duguay, Rochester (585) 753-4069
For respondent: Monroe County Assistant District Attorney Robert J. Shoemaker (585) 753-4810