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, September 7, 2016

No. 132 Rivera v Montefiore Medical Center

Wilbur Rodriguez, 44, went to the emergency room at Montefiore Medical Center in January 2009, suffering from fever, vomiting and shortness of breath. He was admitted about 11 hours later, at 11 p.m., with a diagnosis of pneumonia. Rodriguez was found dead in his bed at 4:40 a.m. the next morning, about 40 minutes after he was last checked. The medical examiner found that he died of pneumonia. His mother, Evelyn Rivera, brought this action against Montefiore, claiming its failure to have him continuously monitored was malpractice.

Prior to trial, the hospital submitted a CPLR 3101(d) statement that said its expert witness would "testify as to the possible causes of the decedent's injuries and contributing factors ... [and] on the issue of proximate causation." The statute requires disclosure "in reasonable detail" of "the substance of the facts and opinions on which each expert is expected to testify." During the trial, after an emergency room physician testified that Rodriguez likely died of a heart attack, Rivera moved to preclude the hospital's expert from testifying about possible causes of death, arguing that its CPLR 3101(d) statement was not sufficiently specific. Supreme Court denied the motion as untimely because she had not objected prior to trial to any lack of specifity in the statement regarding cause of death. The expert then opined that Rodriguez died of sudden cardiac arrest. The jury awarded damages to Rivera for past and future economic loss, but no damages for pain and suffering. The court denied Rivera's post-trial motion to strike the expert's testimony and set aside the verdict on pain and suffering.

The Appellate Division, First Department affirmed in a 4-1 decision, ruling Rivera's application to preclude the expert's testimony was untimely. On receipt of the 3101(d) statement, Rivera "neither rejected the document nor made any objection to the lack of specificity regarding the cause of death," it said. "Having failed to timely object..., plaintiff was not justified in assuming that the defense expert's testimony would comport with the conclusion reached by the autopsy report, and plaintiff cannot now be heard to complain that defendant's expert improperly espoused some other theory of causation for which there was support in the evidence. Plaintiff now argues that the testimony ... should be stricken because it came as a surprise. However, after plaintiff's own experts acknowledged on cross-examination that such a sudden cardiac event was a possibility..., defendant's expert appropriately elaborated on that theory of causation...."

The dissenter said, "As of mid-trial, both parties' actions and submissions were consistent with the medical examiner's autopsy report finding that the decedent died of ... pneumonia, a death necessarily accompanied by pain and suffering attendant to the patient's eventual suffocation." The possibility that Rodriguez died of a heart attack was first raised by the emergency room doctor, who testified as a fact witness, and Rivera properly moved to preclude expert testimony on the matter, he said. "There was no basis for this specific objection to have been raised in response to the CPLR 3101(d) exchange, since no one had hypothesized that the decedent died of a heart attack.... In my view, disallowing a motion to limit expert testimony by excluding a new theory revealed for the first time at trial would eviscerate the procedural protection that CPLR 3101(d) was drafted to create."

For appellant Rivera: Brian J. Shoot, Manhattan (212) 732-9000
For respondent Montefiore: Christopher Simone, Lake Success (516) 488-3300

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No. 133 People v Antonio Aragon

Antonio Aragon was charged in a misdemeanor complaint with criminal possession of a weapon in the fourth degree in Manhattan in June 2011. In the complaint, the arresting officer said he "recovered one set of brass metal knuckles" from Aragon's pocket, and did not further describe or discuss the object. Penal Law § 265.01(1) makes it a crime to possess "metal knuckles," but does not define the term. Aragon moved to dismiss the complaint as jurisdictionally defective because it "merely asserts an ultimate determination" that he possessed metal knuckles without "any language describing the object recovered or what particular aspects of the object fit any definition of 'metal knuckles.'" After Criminal Court denied his motion, Aragon pled guilty to disorderly conduct and was sentenced to time served.

The Appellate Term, First Department affirmed. "Considering 'the well-understood character' of brass or metal knuckles (People v Persce, 204 NY 397, 402 [1912]), no additional descriptive detail of the object recovered from defendant was required for the People's pleading to provide 'adequate notice to enable defendant to prepare a defense and invoke his protection against double jeopardy'...," it said. "To be distinguished is People v Dreyden, 15 NY3d 100, 103-104 (2010), in which a majority of the Court of Appeals held insufficient a misdemeanor complaint which set forth no more than '[a] conclusory statement that an object recovered from a defendant is a gravity knife,' an 'esoteric' weapon which, unlike metal knuckles, 'the Penal Law explicitly defines in complicated detail'...."

Aragon, noting that no New York appellate court has defined the term "metal knuckles," argues the complaint was jurisdictionally defective because it provided "no factual basis to support [the officer's] conclusion that the recovered object was 'metal knuckles.' There was no language in the accusatory instrument that describes the object recovered or what particular aspects of the object fit the definition of 'metal knuckles' defined by either statutory or case law. Indeed, the accusatory instrument provided no physical description of the recovered object in terms of size, color, type of metal. It likewise failed to state that this object was even wearable on a person's hand."

For appellant Aragon: Harold V. Ferguson, Jr., Manhattan (212) 577-3548
For respondent: Manhattan Assistant District Attorney Philip Morrow (212) 335-9000

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To be argued Wednesday, September 7, 2016

No. 134 People v Alexis Ocasio *(papers sealed)*

Alexis Ocasio was arrested in the Bronx in September 2013 after officers stopped and questioned him about graffiti and found a collapsible baton in his back pocket. He was charged with a misdemeanor count of criminal possession of a weapon in the fourth degree under Penal Law § 265.01(1), which makes it a crime to possess a "billy." The statute does not define the term. The arresting officer said in the complaint that Ocasio possessed a "rubber-gripped, metal, extendable baton (billy club)" and that, based on his "training and experience, said baton device is designed primarily as a weapon, consisting of a tubular, metal body with a rubber grip and extendable feature and used to inflict serious injury upon a person by striking or choking."

Criminal Court granted Ocasio's motion to dismiss the complaint for facial insufficiency, saying, "[I]n the absence of either a statutory definition of a 'billy' which includes collapsible, extendable or telescoping batons or the inclusion of such batons as a per se weapon..., the complaint allegations are insufficient to establish that the defendant was in possession of a 'billy' in violation of [section] 265.01(1). It cited People v Talbert (107 AD2d 842 [3rd Dept 1985]), which held that "the term 'billy' must be strictly interpreted to mean a heavy wooden stick with a handle grip which, from its appearance, is designed to be used to strike an individual and not for other lawful purposes."

The Appellate Term, First Department affirmed. "The item described in the underlying accusatory instrument -- a 'rubber-gripped, metal, extendable baton' is not one of the prohibited instruments or weapons set forth in the statute. Nor does the object constitute a 'billy,' one of the objects prohibited," it said, citing Talbert.

Prosecutors say New York courts, including the Third Department in Talbert, recognize that a police nightstick qualifies as a "billy" under section 265.01(1); and now "an expandable baton is an accepted variant on the standard police baton that is currently in use in the New York City Police Department.... Since an expandable baton is a form of police baton, and a police baton is a form of billy club..., one should deduce that an expandable baton is a form of billy club.... The fact that [Talbert] described a 'billy' as 'heavy' and 'wooden' was simply due to the fact that police batons as of 1985 were heavy, wooden objects." They say the complaint in this case "was sufficient to permit defendant to understand the charge and assert a defense."

For appellant: Bronx Assistant District Attorney Marianne Stracquadanio (718) 590-2000
For respondent Ocasio: Paul A. Paterson, Manhattan (212) 373-3000

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To be argued Wednesday, September 7, 2016

No. 135 Matter of Simon v State Commission on Judicial Conduct

Alan M. Simon, a justice of the Spring Valley Village Court and Ramapo Town Court in Rockland County, is challenging a determination of the State Commission on Judicial Conduct that he should be removed from office for "a pattern of injudicious behavior" in which he "abused his judicial position in order to bully, harass, threaten and intimidate his court staff, his co-judge and other village officials and employees with whom he dealt in an official capacity." It also found that Simon "engaged in impermissible political activity" on behalf of a candidate for Rockland County executive in 2013; and removed a legal services agency as counsel for a housing litigant without consulting the client and sanctioned the agency "without authority in law."

The Commission expressed particular concern about a July 2012 incident in the Spring Valley court, when Simon objected to the presence of a college student who had been hired as an intern and threatened to hold him in contempt. When others refused his orders to remove or arrest the intern, Simon threatened contempt citations against the mayor, the chief court clerk, and the Spring Valley Police Department. When fellow Justice David Fried tried to intervene, Simon "threatened him with contempt and told him to 'have a stroke and die,'" then attempted to remove the intern by grabbing his arm. "Where ... a physical confrontation is coupled with multiple threats of arrest and contempt, a two-hour display of unrelenting rage and aggression, and a stream of invective and vitriol, public confidence in [Simon's] fitness to serve as a judge is irredeemably damaged," the Commission said. It cited "numerous other incidents" in which he threatened officials with contempt or arrest "with no lawful or reasonable basis."

Simon argues he should be censured, but not removed from office. "As the record demonstrates, there is a high level of assurance that if petitioner were permitted to remain on the bench, the misconduct complained of -- threats to court staff and others to hold them in contempt, rudeness and use of abusive language -- will not be repeated." He says, "While petitioner's intemperate conduct in dealing with court and other Spring Valley personnel cannot be excused, it always arose from an effort -- albeit misguided -- to improve the efficiency of the court or maintain the court's integrity and independence from a corrupt village administration that saw its mayor and deputy mayor convicted of federal corruption charges.

For petitioner Simon: Lawrence M. Mandelker, Manhattan (212) 682-8383
For respondent Commission: Edward Lindner, Albany (518) 453-4613

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To be argued Wednesday, September 7, 2016

Nos. 136-143 Matter of County of Chemung v Shah (and seven related cases)

In these cases, eight counties sued the state Department of Health (DOH) and its commissioner to obtain Medicaid reimbursement for "overburden expenditures" made prior to 2006. Overburden expenditures, the costs counties incurred for care provided to some Medicaid recipients with mental illness or disabilities, were repaid in full by the state from 1984 through 2005 pursuant to Social Services Law § 368-a(1)(h)(i). When the state enacted a Medicaid cap statute in 2005 to limit increases in the counties' share of the program's cost, it also eliminated overburden reimbursements for costs incurred on or after January 1, 2006, but courts ruled that the state remained obligated to reimburse counties for overburden expenditures incurred prior to 2006. In 2012, the governor proposed an amendment to the Medicaid cap statute -- Section 61 of Part D of the 2012-2013 Health and Mental Hygiene Budget (hereinafter Section 61) -- to "make clear" that the intent of the cap statute was to bar any further reimbursement of overburden expenditures incurred prior to 2006. Section 61, which was enacted on March 30 and took effect on April 1, 2012, provided that counties would not be reimbursed for pre-2006 claims submitted on or after its effective date.

The counties challenged the constitutionality of Section 61, arguing that it retroactively deprived them of their vested rights to reimbursement of pre-2006 overburden costs without due process. They also sought, among other things, mandamus relief directing DOH to review its records, identify any overburden expenses still owed to them from 1984 to 2005, and make appropriate reimbursements. At least 20 counties have brought similar lawsuits, and the state estimates its liability for past overburden reimbursements could exceed $180 million.

The Appellate Division, Third Department ruled that St. Lawrence and Chemung Counties were entitled to reimbursement of their pre-2006 overburden expenditures. It ruled Section 61 was constitutional because it did not retroactively deprive counties of their right to reimbursement, but "simply imposed a statute of limitations for the payment of claims." However, to satisfy due process, it gave the counties "a reasonable grace period" of six months to file their claims. It also held that, under Social Services Law § 368-a(1), "DOH was required to pay ... reimbursements even without any claims being made," and directed DOH to search its records to identify and reimburse any remaining pre-2006 overburden expenditures.

The Appellate Division, Fourth Department dismissed the suits filed by six other counties -- Chautauqua, Jefferson, Oneida, Genesee, Cayuga, and Monroe -- saying they had not shown that Section 61 was unconstitutional. "Inasmuch as [the counties] are not persons who may raise a due process challenge to state legislation, they are not entitled to the relief they seek...," it said. It also ruled the counties were not entitled to submit any further claims or to have DOH search out and process any unreimbursed overburden expenses, reiterating its prior holding in M/O County of Niagara v Shah (122 AD3d 1240) that "the unequivocal wording of Section 61 retroactively extinguishes [a county's] right to submit claims for reimbursement of overburden expenditures made prior to 2006."

For appellant & respondent State: Assistant Solicitor General Victor Paladino (518) 473-4321
For respondent & appellant Counties: Christopher E. Buckey, Albany (518) 487-7600