

# 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 or [gspencer@nycourts.gov](mailto:gspencer@nycourts.gov).

To be argued Wednesday, April 25, 2018

## No. 59 White v Schneiderman

Eric White, a member of the Seneca Nation, and Native Outlet, his convenience store in the City of Salamanca on the Senecas' Allegany reservation, brought this action against New York's Attorney General and Commissioner of Taxation and Finance to challenge the validity of Tax Law § 471, which imposes a tax "on all cigarettes sold on an Indian reservation to non-members of the Indian nation or tribe and to non-Indians." They contended the tax law violates Indian Law § 6, which states, "No taxes shall be assessed, for any purpose whatever, upon any Indian reservation in this state, so long as the land of such reservation shall remain the property of the nation, tribe or band occupying the same;" and the Buffalo Creek Treaty of 1842 between the Senecas and the United States, which provides that the Seneca Nation would retain the Allegany and Cattaraugus reservations and states, "The parties to this compact mutually agree to solicit the influence of the Government of the United States to protect such of the lands of the Seneca Indians, within the State of New York..., from all taxes, and assessments for roads, highways, or any other purpose until such lands shall be sold and conveyed by the said Indians...." White also argues that taxing cigarette sales to non-Indians violates the federal Commerce and Due Process Clauses because the reservation belongs to a sovereign nation.

The state officials moved to dismiss the suit on the ground that Indian Law § 6 and the Treaty of 1842 prohibit only state taxation of reservation land or real property. Supreme Court granted the motion to dismiss "for the reasons set forth in their papers."

The Appellate Division, Fourth Department modified by declaring "that Tax Law § 471 is not inconsistent with Indian Law § 6, the Treaty of 1842," or the federal Due Process or Commerce Clauses. It adhered to its 1997 decision in M/O NYS Dept. of Taxation & Fin. v Bramhall (235 AD2d 75) "that the Treaty of 1842 and Indian Law § 6 bar the taxation of reservation land, but do not bar the imposition of ... sales taxes on cigarettes ... sold to non-Indians on the Seneca Nation's reservations." It said the "plain language" of the treaty and the legislative history of the statute support its conclusion that they bar only state taxes "on the 'lands,' i.e., the real property, of the Seneca Nation." Even if it read the treaty and statute too narrowly, it said, "It is well established that '... States may impose on reservation retailers minimal burdens reasonably tailored to the collection of valid taxes from non-Indians'...."

White argues that enforcement of Tax Law § 471 violates "the plain language of Indian Law § 6, which codified the State's obligation to refrain from taxing '*for any purpose whatever*, upon any Indian reservation,'" and "the plain language of the State's solemn promise to 'protect such of the lands of the Seneca Indians ... *from all taxes*, and assessments for roads, highways, *or any other purpose*'" in the Treaty of 1842. "Regardless of whether the Supreme Court has allowed states to impose such taxes as a matter of *federal* law, this State has unique barriers to the application and enforcement of its tax laws upon Indian reservations because the State is bound by the terms of Indian Law § 6, which expressly prohibits taxation '*for any purpose whatever*,' and the nearly identical prohibition found in the [Treaty of 1842], which preceded it."

For appellants White and Native Outlet: Paul J. Cambria, Jr., Buffalo (716) 849-1333

For appellants Schneiderman et al: Deputy Solicitor General Andrew D. Bing (518) 776-2015

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## No. 60 People v Bryan Henry

This case arises from a series of crimes and arrests in Nassau County in December 2010, all but one involving a black Hyundai Sonata with tinted windows. First, two masked gunmen robbed a tattoo parlor in Carle Place and took a Blackberry cell phone, among other items. The Sonata was recorded on surveillance video at the scene. Two days later, James McClenic was shot to death as he sat in a parked car at a Hempstead gas station. An eyewitness said the gunman rode in a black Sonata. Five days after that, Bryan Henry was stopped in a black Sonata and arrested on a misdemeanor charge of marijuana possession. Officers searched the car and found a Blackberry, which they later learned had been stolen at the tattoo parlor. Henry was assigned counsel to represent him on the marijuana charge and was released on bail. Three days later, during another traffic stop, Henry was arrested for possession of the stolen Blackberry. Detectives questioned him for about six hours about the robbery and the murder, and he admitted in written statements that he was the getaway driver for both crimes.

Supreme Court granted Henry's motion to suppress his statements about the robbery, but not the murder. The police violated his indelible right to counsel when they questioned him about the robbery in the absence of his assigned attorney for the marijuana charge because the cases were related, it said, since the Blackberry stolen at the tattoo parlor was recovered during the marijuana stop. "The police knew or should have known that that phone was related to the marijuana stop. [Henry] had counsel and they had reason to notify that counsel or not question him, one or the other." It refused to suppress his statements about the murder because that was "completely unrelated" to the marijuana charge. Henry was convicted of second-degree murder and acquitted of all charges related to the robbery. He was sentenced to 20 years to life in prison.

The Appellate Division, Second Department modified by vacating his murder conviction and remitting for a new trial, ruling his statements about the murder should also have been suppressed. "In light of the [trial court's] determination that defendant's right to counsel was violated when he was questioned with regard to the robbery charges, we further find that his right to counsel was violated by questioning on the factually interwoven homicide matter. Indeed, the robbery and the murder cases were so closely related that questioning about the gas station shooting 'would all but inevitably elicit incriminating responses regarding' the robbery," it said, citing People v Cohen (90 NY2d 632). "Furthermore, with regard to the second category of cases in which the attachment of counsel on one crime may preclude interrogation on another crime, the ... impermissible questioning of defendant on the robbery charges was not fairly separable from questioning on the murder charge, and 'was purposely exploitive in the sense that it was calculated to induce admissions' on the murder charge...."

The prosecution argues the Appellate Division misapplied Cohen by examining the relationship between the murder and the robbery, for which Henry did not have counsel, instead of between the murder and the marijuana charge, for which he did. Based on the trial court's conclusion "that the robbery charges were 'related' to the marijuana charge for which defendant had counsel, the Appellate Division improperly analyzed the interrogation under the Cohen tests as if defendant were actually represented by counsel on the robbery charges themselves. This was not the case, and the resulting holding improperly extended the right to counsel, by proxy, far beyond that which this Court provided in Cohen."

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To be argued Wednesday, April 25, 2018

## No. 61 People v Roque Silvagnoli

In April 2008, David Machedo was fatally shot at the Campos Plaza housing project in Manhattan, and Detective Eric Ocasio was assigned to investigate. Roque Silvagnoli quickly became a suspect, but police were unable to apprehend him until December 2010, when he was arrested in an unrelated case. Ocasio, who was aware that Silvagnoli was facing a drug sale charge from 2007 and that he was represented by counsel on that charge, interviewed him about the homicide on the day of his arrest. In the course of about three and a half hours of questioning, Ocasio referred at least once to the 2007 drug case, telling Silvagnoli that "you could say nothing, but that was kind of a dumb thing you did selling drugs to an undercover back in 2007." Silvagnoli replied, "[T]hat was just drugs. I'm talking about drugs, right. I didn't have anything to do with this murder." By the end of the interview, Silvagnoli confessed to shooting Machedo, who owed him a drug debt of \$220.

Supreme Court denied his motion to suppress the confession, ruling that Ocasio's reference to the 2007 drug case did not violate Silvagnoli's right to counsel. Ocasio's "single, flippant, comment was part of his interrogation strategy during which the detective discussed with defendant the evidence he had amassed against him" and it did not run afoul of People v Cohen (90 NY2d 632), the court said. Silvagnoli's "narcotics case was easily separable from the homicide. That the crimes occurred within the same geographical area and are, generally, drug-related ... does not make them so intertwined that they are not discrete occurrences." Silvagnoli later pled guilty to first-degree manslaughter and was sentenced to 18 years in prison.

The Appellate Division, First Department reversed and suppressed the confession on a 3-2 vote, saying, "Although the reference to the drug charges on which defendant was represented was brief and flippant, it was not, in context, innocuous or discrete and fairly separable from the homicide investigation. The detective told defendant during the questioning that he knew defendant was involved in selling drugs at the location of the murder and that the killing was over a drug debt. The remarks regarding the pending drug case went to defendant's alleged participation in the drug trade at the location of the homicide, the very activity out of which a motivation for killing the victim arose. Indeed, it succeeded in eliciting from defendant a response that may fairly be interpreted as incriminating himself in dealing drugs at the location, the alleged motivation and context out of which the homicide occurred."

The dissenters said that, while Ocasio "testified that he discussed 'drug dealing at Campos' with defendant numerous times, there is no basis in the record to conclude that Ocasio brought up the [2007 drug crime] more than once," and "it is clear ... that this was an effort to signal to defendant that he knew defendant had a motive to shoot the victim." Since the reference to the 2007 drug charge was "a 'single, flippant, comment,'" they said, "the questioning about the charged crime could not have been 'completely interrelated and intertwined and not discrete and fairly separable' from the questioning about the homicide.... Further, because the statement was so isolated, it could not have comprised a strategy 'designed to add pressure on defendant to confess....'"

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