State of New York
Court of Appeals

To be argued Tuesday, August 31, 2021 (arguments begin at 2 p.m.)

No. 51 Adar Bays, LLC v GeneSYS ID, Inc.

GeneSYS ID, Inc., a producer of medical supplies, borrowed $35,000 from Adar Bays, LLC in an arm's length transaction in May 2016. The parties executed a Convertible Redeemable Note that required GeneSYS to repay the loan within one year; provided for an 8 percent annual interest rate; and further provided that Adar Bays, at its sole discretion, was entitled to convert any or all of the loan balance into GeneSYS common stock at a 35 percent discount from the stock's market price. Six months later, Adar Bays directed GeneSYS to convert $5,000 of the loan balance into shares of stock. GeneSYS acknowledged receipt of the notice, but refused to honor it and refused to repay any of the outstanding debt.

Adar Bays brought this federal action for breach of contract against GeneSYS in U.S. District Court for the Southern District of New York. GeneSYS moved to dismiss the suit on the ground that the stock conversion option in the Note violates New York's criminal usury statute, Penal Law § 190.40, which states that a lender is guilty of criminal usury when "he knowingly charges, takes or receives any money or other property" at an annual rate exceeding 25 percent. GeneSYS contended that the 35 percent discount for Adar Bays if it converts outstanding debt to stock should be treated as interest, which would violate Penal Law § 190.40. The statute has no provision for voiding a loan that is criminally usurious, but GeneSYS argues the criminal statute should be read together with New York's civil usury law, General Obligations Law § 5-511, which provides that loan contracts with interest rates exceeding 16 percent per year "shall be void," even though corporations cannot raise civil usury as a defense. Adar Bays argued that the 35 percent discount is not interest because when the contract was executed it was speculative whether it would ever exercise its conversion option and that, if it did convert any of the debt to stock, the transaction would become an equity investment which is not subject to the usury laws.

District Court granted summary judgment to Adar Bays. It said the 35 percent discount should not be considered interest because "[t]he conversion right was simply too uncertain at the time of contracting. As courts have noted, a myriad of circumstances could decrease the price of the stock...." Even if it found the Note was usurious, it said, "'[T]here is no specific statutory authority for voiding a loan that violates the criminal usury statute.'"

The U.S. Court of Appeals for the Second Circuit is asking this Court to resolve the key issues, saying "such a resolution hinges on an interpretation of New York law having important public policy implications, with potential applications to many different types of financial transactions." In a pair of certified questions, it asks, "1. Whether a stock conversion option that permits a lender, in its sole discretion, to convert any outstanding balance to shares of stock at a fixed discount should be treated as interest for the purpose of determining whether the transaction violates N.Y. Penal Law § 190.40, the criminal usury law. 2. If the interest charged on a loan is determined to be criminally usurious under N.Y. Penal Law § 190.40, whether the contract is void ab initio pursuant to N.Y. Gen. Oblig. Law § 5-511."

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State of New York
Court of Appeals

To be argued Tuesday, August 31, 2021 (arguments begin at 2 p.m.)

No. 52 People v Carlos Torres
No. 53 People v Dave Lewis

The defendants in these appeals, each convicted of misdemeanor charges under New York City Administrative Code § 19-190 stemming from fatal traffic accidents in midtown Manhattan, contend the statute is unconstitutional because it employs a civil negligence standard as a basis for criminal liability. Section 19-190, enacted in 2014 as part of the City's Vision Zero Action Plan to reduce pedestrian injuries and deaths, imposes misdemeanor criminal penalties on a motorist who fails to yield the right of way to a pedestrian or bicyclist and "causes physical injury" when the injury is "caused by the driver's failure to exercise due care." Prosecutors argue the law would be constitutional if it were read as a strict liability statute, requiring no mental culpability at all, and so a civil negligence standard of "due care," a "more culpable mental state, is constitutional as well."

Carlos Torres, a truck driver, made a right turn with a green light in 2016 and, as he turned, he struck and killed a woman in a crosswalk who had the "WALK" signal in her favor. Dave Lewis, a bus driver, sideswiped a bicyclist in 2017 as he drove on a street that was narrowed by parked cars. His rear wheel ran over and killed the cyclist. Both men were charged under Administrative Code § 19-190 and Vehicle and Traffic Law [VTL] § 1146(c)(1), which applies an identical "due care" standard for conviction of a traffic infraction.

Criminal Court denied motions by both defendants to dismiss the charges, rejecting their constitutional clams. Torres then pled guilty and was sentenced to a conditional discharge and $750 fine. Lewis was convicted at a bench trial and sentenced to 30 days in jail.

The Appellate Term, First Department affirmed both convictions. "Even strict liability crimes are legal and constitutional...," it said in Torres. "Particularly with regard to public welfare offenses, criminal penalties may be imposed without regard to mental culpability.... Manifestly, if there is no constitutional infirmity in a crime that requires no mental state at all, then, a fortiori, there is no constitutional infirmity in an offense that requires proof of defendant's failure to exercise due care, a more culpable mental state."

The defendants argue that Administrative Code § 19-190, by criminalizing conduct based on a civil negligence standard of due care, violates the due process provisions of the federal and state constitutions. Torres says, "There are alternate ways to promote pedestrian and cyclist well-being without criminalizing acts of simple negligence – essentially, all traffic accidents in which a driver is civilly liable. Without this Court's intervention, a broad swath of everyday conduct will be criminalized." Lewis says, "Whether [he] committed simple negligence is an issue for civil court, but in this State we do not incarcerate individuals for failing to exercise the judgment of a reasonable person."

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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.

To be argued Tuesday, August 31, 2021 (arguments begin at 2 p.m.)

No. 40 People v Richard B. Gaworecki

In July 2017, Richard Gaworecki sold five blue packets of heroin to Nicholas McKiernan at a Binghamton gas station and shortly after sent him a text message saying, "I hooked you up. Just be careful." Less than two days later, McKiernan was found dead of a heroin overdose in his bedroom. Police officers found empty blue and green heroin packets and syringes in the room. Gaworecki told police he had warned McKiernan "to be wicked careful." A grand jury charged Gaworecki with second-degree manslaughter as well as drug sale and possession.

County Court dismissed the manslaughter charge for insufficient evidence, saying "no additional or aggravating factors were established other than the sale of heroin by defendant to Mr. McKiernan.... [A]dditional evidence, other than the mere fact that the accused sold heroin to a person and the person later died of a heroin overdose, is required to charge an individual with the death of another person.... Other than defendant's own warnings to Mr. McKiernan to 'be careful,' there was no direct evidence that the defendant was aware that the heroin he sold to Mr. Mckiernan was particularly potent or strong."

The Appellate Division, Third Department reinstated the manslaughter count in a 3-2 decision. The majority cited testimony by McKiernan's girlfriend that she snorted half of one of the blue packets of heroin and found it so "strong and potent" that she flushed the rest down the toilet; and testimony by another of Gaworecki's customers who bought two of the blue packets and then refused to buy any more, informing the defendant that the heroin was "strong and it almost killed [him]." The court said, "Although the People have the burden of proving at trial that a defendant is guilty of manslaughter in the second degree beyond a reasonable doubt, 'legal sufficiency in the context of a grand jury proceeding does not require such a high standard of proof'.... Given defendant's knowledge of the potency of the drugs that he was distributing and their potential lethality, it is evident that the nature of the risk involved was of such degree 'that defendant's failure to perceive it constituted a gross deviation from the standard of care that a reasonable person would observe in the situation' and that his actions were a sufficiently direct cause of the victim's death for him to face the judgment of a jury...."

The dissenters countered that "there is no indication" that McKiernan's girlfriend conveyed her concern about the strength of the heroin to Gaworecki and that the other customer's warning to Gaworecki about the strength of the heroin "did not occur until after defendant had sold the heroin to the victim." They said, "Viewing the evidence in the light most favorable to the People, the evidence failed to prove either that defendant's sale of heroin to the victim created a substantial and unjustifiable risk of death, through proof of additional circumstances, or that the sale of heroin was a sufficiently direct cause of the victim's death. There was no evidence presented that the victim overdosed on the heroin that defendant sold him," since "there was no evidence that defendant sold heroin in green packets" and "no evidence as to which packet or packets the victim took heroin from on the night he overdosed.... Although defendant warned the victim to 'be careful,' this is not enough to hold defendant criminally liable for the victim's death...."

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