

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.

To be argued Thursday, November 21, 2019

No. 106 Matter of The Plastic Surgery Group, P.C. v Comptroller of the State of New York

In 2015, the State Comptroller began an audit to determine whether the state had overpaid The Plastic Surgery Group (PSG) for medical services provided to members of the State Health Insurance Program's Empire Plan for claims submitted since 2011. The state, which is self-insured, pays medical providers through United Healthcare, which processes claims for treatment of public employees and retirees belonging to the Empire Plan. To conduct the audit, the Comptroller served a subpoena on PSG for the billing records of Empire Plan members, including the names and addresses of patients, services rendered, and amounts paid by the patients. PSG commenced this special proceeding to quash the subpoena on the ground that it did not comply with CPLR 3122(a)(2), which generally requires that a subpoena for patient medical records, "other than a trial subpoena issued by a court," must be "accompanied by a written authorization by the patient," which the Comptroller did not provide.

Supreme Court granted PSG's petition to quash, ruling the subpoena was "deficient on its face" because it did not include patient authorizations. It rejected arguments of the Comptroller's Office that it was not subject to the patient authorization requirement of CPLR 3122(a)(2) based on the subpoena powers granted to it by State Finance Law § 9, and that it was exempt from privacy requirements of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) because it qualified as a "health oversight agency" under HIPAA regulations.

The Appellate Division, Third Department reversed and granted the Comptroller's motion to compel compliance, saying "the subpoena was validly issued in furtherance of [the Comptroller's] constitutional and statutory authority and obligation to audit payments made by the state for medical services provided under the Empire Plan (see NY Const, art V, § 1; Civil Service Law § 167[7]...)." In M/O Martin H. Handler, M.D., P.C. v DiNapoli (23 NY3d 239), it said, the Court of Appeals "recognized that 'the Legislature has granted [the Comptroller] broad subpoena powers in furtherance of [its] investigatory functions under State Finance Law § 9.'" CPLR 3122(a)(2), and its patient authorization requirement, "only applies, by its terms, to subpoenas issued by a party to litigation seeking discovery under CPLR 3120 or 3121, after an action or proceeding is commenced." It also held that HIPAA did not bar disclosure of the records because the Comptroller "falls squarely within HIPAA's definition of a health oversight agency."

PSG argues that State Finance Law § 9, which gives the Comptroller subpoena power, states that such subpoenas "shall be regulated by" the CPLR, which would include the patient authorization requirement in CPLR 3122(a)(2). "[T]here is nothing in the text of CPLR 3122(a)(2) that limits its application exclusively to subpoenas duces tecum issued pursuant to CPLR 3120 or 3121 in the course of discovery in a pending action," it says, and "the plain meaning of the words used in the statute" require the Comptroller to supply signed authorizations by each patient whose records are sought. PSG also argues that "requiring the Comptroller to comply with CPLR 3122(a)(2) promotes public policy protecting patient confidentiality."

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For respondent Comptroller: Deputy Solicitor General Jeffrey W. Lang (518) 776-2031

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No. 107 People v Tyrell Cook

Tyrell Cook was arrested in 2013 for allegedly attempting to rob a livery cab driver at knife-point in the Bronx. The driver told police that the perpetrator was a black man wearing a red shirt and black pants. He said that when the man cut him on the neck, he crashed his cab into parked cars and the man fled. Other officers detained Cook -- a black man wearing black pants and a black sweatshirt with a red zipper and red trim around the neck -- on the platform of a nearby subway station minutes after the crime. The cab driver was taken to the station for a show-up identification. Cook was brought out to the street in handcuffs and the driver identified him as the robber.

Cook moved to suppress the identification, contending the police lacked reasonable suspicion to justify his detention in the subway station. The prosecutor presented one witness, a sergeant, who testified that the detaining officer had said over the radio that Cook was the only person on the platform who fit the driver's description. After both sides rested, defense counsel argued that the driver's description was too vague to provide reasonable suspicion and, in any case, Cook's shirt did not match the description. The court then suggested that the detaining officer might have made some other observation about Cook that would justify the stop. The court granted the prosecutor's motion to reopen the suppression hearing over a defense objection that the prosecution had been given a full and fair opportunity to justify the stop and that reopening the hearing would create a risk of tailored testimony. At the reopened hearing, the prosecutor called an officer who first encountered Cook in the station, and who testified that Cook, the only person "wearing red," was sitting on the platform behind a barrier that obstructed views of him. The court then denied the motion to suppress the identification, finding that Cook was lawfully detained. Cook was convicted of first-degree attempted robbery and second-degree assault and was sentenced to six years in prison.

The Appellate Division, First Department affirmed, saying, "The court providently exercised its discretion in reopening a suppression hearing, before rendering a decision, in order to permit the People to call an officer with additional information tending to establish reasonable suspicion for defendant's detention.... The court had not made any ruling, and the circumstances did not pose a risk of tailored testimony." It also ruled suppression was properly denied. "Although the People did not meet their burden of going forward during the initial hearing, on the reopened hearing they sufficiently demonstrated reasonable suspicion to justify defendant's detention."

Cook argues, "This Court's well-settled law entitled the prosecution to one full and fair opportunity to make its case against suppression, and the prosecution chose to make its case by relying solely on the vague description offered by the complainant. The failure of that strategic choice did not entitle the prosecution to another bite at the apple.... It is immaterial that the court had not rendered a formal decision on the merits; the court's comments during oral argument after the first hearing identified the deficiencies in the prosecution's proof and described the factual showing it would require to deny suppression, creating the same risk of tailoring as if it had made a formal decision." He asks this Court to make clear that People v Kevin W. (22 NY3d 287) "applies to preclude reopening a suppression hearing in the circumstances presented here."

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For respondent: Bronx Assistant District Attorney Shera Knight (718) 838-6057

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No. 108 People v Clinton Britt

A police officer patrolling Times Square in 2014 saw Clinton Britt standing in front of a haunted house attraction called Times Scare and drinking from a container in a paper bag. Britt fled into Times Scare, where the officer detained him and found he had a Lime-a-Rita cocktail in the bag. The officer intended to issue a summons for an open container violation, but arrested him instead when he could not produce valid identification. Subsequent searches found Britt was carrying \$300 in counterfeit currency – 17 bills in denominations of \$10 and \$20 – and small amounts of cocaine and ecstasy. He also had \$148 of genuine currency in loose bills the officer found in the same pocket. The counterfeit bills were folded over and held together with a rubber band. At the precinct, Britt told the officer, “I want to talk to a detective, and I will give up who I got the currency from, the counterfeit bills from, if you make the drug charges go away.”

Britt was charged with 17 felony counts of criminal possession of a forged instrument in the first degree (Penal Law § 170.30), along with misdemeanor drug possession. At the close of evidence in his trial, Britt moved to dismiss all of the forged instrument charges on the ground there was insufficient proof of his intent to defraud. Penal Law § 170.30 requires proof that a defendant possessed a forged instrument “with knowledge that it is forged and with intent to defraud, deceive or injure another.” He cited People v Bailey (13 NY3d 67), which held that knowledge that currency is counterfeit “is not sufficient to hold defendant criminally liable for possessing a forged instrument. Knowledge and intent [to defraud] are two separate elements that must each be proven beyond a reasonable doubt by the People.” Supreme Court denied the motion to dismiss. Britt was convicted of all the forged instrument counts and one drug count. He was sentenced to 3 to 6 years in prison.

The Appellate Division, First Department affirmed, saying the evidence of intent “went beyond mere possession. Defendant carried 17 bills ... totaling \$300. Furthermore, defendant separated the counterfeit bills from his genuine currency by securing them with a rubber band, which suggested an intent to use the counterfeit bills selectively, in situations where they would be least likely to be detected. Based on this combination of factors, and the exercise of common sense, the jury could reasonably have concluded that defendant had no reason to carry these counterfeit bills except to spend them, as soon as the opportunity arose...” Distinguishing Bailey, it said that while the defendant in that case, a pickpocket in Times Square, “had three \$10 counterfeit bills in his pocket, there was no indication that he intended to defraud, deceive or injure another with counterfeit bills, only that he intended to steal real currency from his intended victims.”

Britt argues there was insufficient evidence of his intent to defraud under Bailey, which “teaches that knowing possession cannot give rise to an inference of intent to defraud..., prohibits the prosecution’s argument that intent can be established by Mr. Britt’s presence in Times Square” and “also prohibits the prosecution’s argument that intent can be established by the quantity of counterfeit bills found on Mr. Britt.” He says, “If anything, the fact that the counterfeit bills were ... tied up with a rubber band would suggest a *lack* of intent to use those bills” because his “genuine bills were ‘loose’ in his pocket and more readily accessible, indicating that those were the bills that Mr. Britt intended to use.”

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