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, September 12, 2013

No. 167 Osterweil v Bartlett

In this federal case challenging the constitutionality of New York State's gun licensing law, the U.S. Court of Appeals for the Second Circuit is asking this Court to resolve a "predicate" question: "Is an applicant who owns a part-time residence in New York but makes his permanent domicile elsewhere eligible for a New York handgun license in the city or county where his part-time residence is located?"

In May 2008, Alfred G. Osterweil applied for a handgun license in Schoharie County, where he had his primary home. A short time later, he informed the sheriff that he had changed his primary residence to Louisiana, while keeping his Schoharie County house as a part-time vacation residence, and asked whether this would make him ineligible for the license. Penal Law § 400.00(3)(a) requires that license applications be made "in the city or county ... where the applicant resides, is principally employed or has his principal place of business as merchant or storekeeper." While the application was pending, the U.S. Supreme Court ruled in District of Columbia v Heller (554 US 570 [2008]) that the Second Amendment protects an individual right to bear arms and that the core of this right is the right to self-defense in the home.

Schoharie County Court Judge George Bartlett, III interpreted Penal Law § 400.00(3)(a) as imposing a domicile requirement and denied Osterweil's application because New York "is not his primary residence and, thus, not his domicile." The judge relied on the Appellate Division, Third Department's ruling in Mahoney v Lewis (199 AD2d 734 [1993]), which said, "as used in this statute, the term residence is equivalent to domicile and requires something more than mere ownership of land."

Rather than appeal the ruling in state court, Osterweil filed a federal suit in the Northern District of New York alleging that a domicile requirement violates the Second and Fourteenth Amendments. U.S. District Court granted summary judgment to the State and dismissed the suit. It ruled a domicile requirement does not violate the Second Amendment because it "allows the government to monitor its licensees more closely and better ensure the public safety" and, thus, is substantially related to a significant state interest.

The Second Circuit, in an opinion by retired U.S. Supreme Court Justice Sandra Day O'Connor, said the question of whether the statute requires domicile in New York or merely residence "is a predicate to a serious constitutional question" and should be answered first, since a holding that only residence is required would resolve the litigation without having to confront a "very difficult" constitutional controversy. It said the State Court of Appeals should decide the meaning of "resides" because the answer "requires interpretation of the value and policy judgments of the state legislature" and involves an important state concern. "The regulation of firearms is a paramount issue of public safety, and recent events in this circuit are a sad reminder that firearms are dangerous in the wrong hands."

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For respondent Bartlett: Assistant Solicitor General Simon Heller (212) 416-8025

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To be argued Thursday, September 12, 2013

No. 168 Matter of State of New York v Enrique D. *(papers sealed)*

In this Mental Hygiene Law article 10 proceeding, Enrique D. is appealing a determination that he is a dangerous sex offender requiring confinement in a secure treatment facility. He is a 37-year-old blind man whose record includes convictions for sexual misconduct in 2001 and first-degree sexual abuse in 2002. His most recent offense occurred in 2006, when he sexually assaulted a good Samaritan who helped guide him to his Bronx apartment building. Enrique pled guilty to first-degree attempted sexual abuse and was sentenced to two to four years in prison.

As Enrique neared release from prison in 2009, the State petitioned for civil management under Mental Hygiene Law article 10. At the jury trial to determine whether he suffers from a mental abnormality, he sought to call a former girlfriend to testify that he exercised self-control over his sexual desires. The State opposed the request, arguing that lay testimony is not relevant to the issue of mental abnormality and only expert testimony should be allowed. Supreme Court precluded the witness on the ground that her testimony would not be relevant, but said Enrique's psychiatric expert could testify about anything the girlfriend told him that affected his diagnosis. The State's expert diagnosed Enrique as having "paraphilia, not otherwise specified (NOS), non-consent," testifying that Enrique was sexually aroused by forcing non-consenting women to engage in sexual behavior and that he had "great difficulty" controlling his sexual impulses. Enrique's expert found that he did not suffer from paraphilia NOS, and testified that the "non-consent" diagnosis is controversial and "is simply not accepted" in the psychiatric community. The jury found that Enrique suffers from a mental abnormality and, after a dispositional hearing, Supreme Court determined that he is a dangerous sex offender requiring confinement.

The Appellate Division, First Department affirmed, rejecting his claim that the preclusion of his former girlfriend's testimony as irrelevant violated his statutory and constitutional rights to call witnesses. "Under [Enrique's] offer of proof, that he may not have sexually abused one former girlfriend -- and there was evidence in the proceeding that he had at least 26 sexual partners -- does not tend to disprove that his behavior manifested a pattern of sexually abusing nonconsenting women."

Enrique argues that his former girlfriend's testimony was relevant because it "would have assisted the jury in evaluating the credibility of the two expert witnesses, who presented competing theories as to whether [he] was properly diagnosed with paraphilia NOS non-consent and whether he had serious difficulty in controlling his sexual behavior." He says, "... the State has repeatedly been permitted to call ... lay witnesses to testify *against* respondents" on the issue of mental abnormality in article 10 proceedings, and such testimony on behalf of respondents should be no less relevant.

For appellant Enrique D.: Sadie Zea Ishee, Manhattan (646) 386-5891
For respondent State: Assistant Solicitor General Valerie Figueredo (212) 416-8019

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To be argued Thursday, September 12, 2013

No. 169 People v Reyes Rodriguez

Reyes Rodriguez and sixteen others were charged with committing a series of burglaries in New York City in 2005. At trial, the primary witnesses against Rodriguez were two accomplices in the burglary ring, Joseph Hernandez and Eulalia Rodriguez (no relation to defendant), who appeared pursuant to cooperation agreements. They testified that Reyes Rodriguez went by the nickname Rumba. Hernandez also testified that defendant's telephone number was listed in his cell phone directory under the name Rumba. According to telephone records, the number listed for Rumba was registered in the name of Hankook Binoon, not Reyes Rodriguez, and the cell phone seized from Rodriguez at the time of his arrest was not associated with the number registered to Binoon.

A police sergeant testified that Rumba's phone number in Hernandez's directory belonged to Rodriguez. When the sergeant attributed another number in the directory to a codefendant, based on his nickname, the trial judge asked, "How did you know what the nickname was of the person, how did you figure that out?" The sergeant replied, "Through the cooperator." The court barred defense counsel from cross-examining the sergeant about the identity of the cooperator. Defense counsel learned at the charge conference that the sergeant's cooperator was an accomplice who did not testify at the trial. Rodriguez moved for a mistrial, citing Crawford v Washington (541 US 36 [2004]) and arguing that the sergeant's testimony about information provided by the cooperator deprived him of his right to confront witnesses. Supreme Court denied the motion. Rodriguez was convicted of first-degree robbery and second and fourth-degree conspiracy. He was sentenced to an aggregate term of 12 to 18 years.

The Appellate Division, First Department affirmed. It said the sergeant's testimony about how he learned defendant's nickname "did not violate Crawford, because the officer did not directly place before the jury any testimonial statement by a nontestifying declarant, and this portion of the officer's testimony was not offered for its truth. In any event, were we to find any error, we would find it to be harmless."

Rodriguez argues that his constitutional right "to confront and cross-examine the witnesses against him was violated when the trial court permitted a police witness to testify concerning information he learned from a non-testifying cooperator that incriminated" him. He says the sergeant's testimony identifying him as Rumba and Binoon "did 'directly place before the jury' a testimonial statement by a non-testifying declarant," and the testimony had no relevance if it was not offered for its truth. Among other things, he also contends the accomplice testimony of Hernandez and Eulalia Rodriguez was not sufficiently corroborated and the prosecution failed to disclose Rosario material relating to the sergeant's gathering of information from the non-testifying cooperator.

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For respondent: Manhattan Assistant District Attorney Christopher P. Marinelli (212) 335-9000

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To be argued Thursday, September 12, 2013

No. 170 Ramkumar v Grand Style Transportation Enterprises, Inc.

In April 2007, Nandkumar Ramkumar was riding in a car driven by Danish Bissessar when it collided in Queens with a vehicle owned by Grand Style Transportation Enterprises. Ramkumar was taken by ambulance to a nearby hospital where he was diagnosed with soft tissue injury, prescribed ibuprofen, and released. The next day, he went to a medical clinic where he was ultimately diagnosed as having herniation of his cervical and lumbar spine and a tear in his right meniscus. He underwent arthroscopic surgery on his knee in June 2007 and was prescribed physical therapy.

Ramkumar brought this personal injury action against the owners and drivers of the vehicles. Supreme Court granted the defendants' motions for summary judgment dismissing the suit on the ground that he did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

The Appellate Division, First Department affirmed in a 3-2 decision, saying the defendants made a prima facie showing of entitlement to summary judgment and, in opposition, Ramkumar "failed to offer a reasonable explanation for a significant gap in his medical treatment." He testified at his deposition that no-fault coverage of his physical therapy was "cut off" in February 2008, it said, and "the record gives no indication that plaintiff received any medical treatment during the 24-month period before he submitted answering papers to defendants' motions.... A bare assertion that insurance coverage for medically required treatment was exhausted is unavailing without any documentary evidence of such or, at least, an indication as to whether an injured claimant can afford to pay for the treatment out of his or her own funds.... Plaintiff, who was employed and living with his parents, gave no such indication."

The dissenters said Ramkumar offered the necessary explanation for ceasing treatment "when he said, perhaps inartfully, that his benefits were 'cut off' at some point," and they said the majority's requirement that he offer documentary evidence or some indication of whether he could afford to pay for the treatment himself "would engraft onto section 5102(d) an unfair and unreasonable standard of proof. Anyone who has ever dealt with no-fault carriers would understand the likely futility of obtaining the suggested letter from them.... The fact of the matter is that for most people, when insurance coverage ends, treatment ends.... The right to sue for a serious injury cannot be predicated on the plaintiff paying those substantial fees out of pocket, assuming that the funds exist."

For appellant Ramkumar: Judah Z. Cohen, Woodmere (646) 580-3440
For respondents Bissessar: Ashley E. Sproat, White Plains (914) 997-8100
For respondents Grand Style et al: Matthew W. Naparty, Woodbury (516) 487-5800

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To be argued Thursday, September 12, 2013

No. 182 Matter of State of New York v Floyd Y. *(papers sealed)*

Floyd Y. was convicted in 2001 of first-degree sexual abuse and endangering the welfare of a child for molesting two children. He was sentenced to four to eight years in prison. In 2007, after his sentence expired, the State filed a civil management petition under Mental Hygiene Law article 10, alleging that he is a dangerous sex offender who should be confined in a secure treatment facility.

At the article 10 jury trial, the State called psychologist Catherine Mortiere to testify that she had diagnosed Floyd with pedophilia and antisocial personality disorder and that she believed he had a high risk of reoffending. She also testified about the reports and records that formed the basis of her opinion, including hearsay statements from seven other victims of alleged sex offenses that were contained in affidavits or police records. Floyd pled guilty in three of those prior cases, but four others did not result in a charge or conviction. Dr. Mortiere testified that such documents are heavily relied upon in her profession and are necessary to form an opinion as to whether a respondent suffers from a mental abnormality. The jury found that Floyd suffers from a mental abnormality and, after a dispositional hearing, Supreme Court determined that he is a dangerous sex offender requiring confinement.

The Appellate Division, First Department affirmed, ruling that most of Dr. Mortiere's testimony was properly admitted under the "professional reliability" exception to the hearsay rule. Article 10, "in effect, requires an expert to review the very material Mortiere considered in order to evaluate and reach a prognosis," it said, and barring an expert from discussing those materials in court "would significantly hinder the jury's ability to assess the expert's testimony.... The information Mortiere relied upon was not limited to victim's affidavits, but rather came from police reports, plea documents and conviction certificates, all of which established the reliability of the out-of-court material and are 'specifically deemed reliable' by the statute...." Two of the unproven offenses should have been excluded, "due to reliability issues and a need to put some limit on the hearsay information put before the factfinder," because Floyd was acquitted in one case and was not charged in the other, but it said the error was harmless because the jury was told the allegations were unproven and they "represented only a small fraction of the evidence considered by the expert."

Floyd argues that "the unproven accusations from non-present declarants, gleaned mostly from a collection of unspecified affidavits, lacked adequate indicia of reliability to satisfy the requirements of the professional reliability exception. Moreover, because the experts were allowed to testify to the contents of the unproven accusations without limitation -- and, indeed, to vouch for the accuracy of those accusations -- they effectively became conduits for the hearsay claims of the out-of-court witnesses. The introduction of these accusations violated Floyd Y.'s due process right to a fair trial." He also argues that the testimony of Dr. Mortiere violated psychologist-patient privilege under CPLR 4507 because she treated him while he was being held at the Kirby Forensic Psychiatric Center.

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