State of New York
Court of Appeals

To be argued Thursday, September 13, 2018

No. 102 Matter of Haug v State University of New York at Potsdam *(papers sealed)*

Benjamin Haug was a freshman at the State University of New York at Potsdam in September 2014. As he was returning to his dorm room after a night of drinking, he encountered a female student (the complainant) that he knew from high school. She invited him up to her room, where they had sexual intercourse. Shortly afterward, the complainant reported to campus police that she had been sexually assaulted. The officer who took her report later testified at a hearing that the complainant "didn't want any evidence collected" and did not want her assailant "to be necessarily in trouble." She told the officer that she "froze" and "didn't tell the person no, didn't have any gesture saying that it wasn't welcome." She refused to name her assailant, but an anonymous tip four days later identified Haug. A SUNY Potsdam official, Annette Robbins, contacted the complainant, who told her that she was "making out" with Haug on the bed and, when he suggested they have sex, she took off her shirt. Haug then removed her pants and his own clothes and they had intercourse. She said she "froze" and "let things happen." Haug was charged with sexual misconduct under the school's code of conduct, which requires affirmative consent to sexual activity, defined as "spoken words or behavior that indicates, without doubt to either party, a mutual agreement to participate." The complainant did not appear at his hearing, where testimony was given by the campus officer, Robbins, and Haug. The hearing board found Haug guilty of sexual misconduct and recommended that he be suspended for the remainder of the semester. Haug appealed. The school's appellate board upheld the finding of misconduct, but recommended that the penalty be increased to immediate expulsion, a penalty the school's president imposed.

The Appellate Division, Third Department annulled the determination for lack of substantial evidence on a 3-2 vote and ordered the records expunged. "The complainant's account was set forth by others who had conversed with her.... It is not clear to us that a reasonable person could find from these hearsay accounts an absence of 'behavior that indicate[d], without doubt to either party, a mutual agreement to participate in sexual intercourse,' as to do so would require overlooking the complainant's admission that she removed her shirt when sex was suggested.... [W]hile the broad contours of [Haug's] account matched those of the complainant, their accounts differed on the critical issue of consent. [He] specifically stated that they began kissing after talking and that ... the complainant took off both of their shirts. [He] then removed the rest of their clothing and asked the complainant if she had any condoms, to which she replied that she did not but that it was 'fine' and no reason to worry. The complainant then straddled [Haug] from above while they had sex and, after it was over, asked [him] if he had fun." It said this testimony "seriously controverted the hearsay evidence" that the complainant did not consent.

The dissenters said, "The complainant reported that [Haug] 'began making out with her' and suggested that they have sex, but that [he] did not ask for, nor did she give, her consent. Although the complainant acknowledged that she took off her shirt, she stated that [he] took off her pants and that she thereafter 'froze' and "'let things happen" from that point on.' This evidence reasonably demonstrated that the complainant did not affirmatively consent, verbally or through her actions, to sexual intercourse. To be clear, taking off one's own shirt is not, in and of itself, consent to sexual intercourse.... Moreover, [Haug's] own testimony revealed that he had doubts as to whether the complainant consented to engaging in sexual intercourse. [He] testified that, after receiving a campus-wide rape alert, he sent the complainant a text message about the alert because he was 'worried' and 'didn't know if she had reported [him].' [His] testimony in this regard was indicative of a consciousness of guilt...." In a case with "competing versions of events...," they said, "the duty of weighing the evidence and 'making the choice' between conflicting inferences lies exclusively within the province of SUNY...."

For appellant SUNY Potsdam: Assistant Solicitor General Brian D. Ginsberg (518) 776-2040
For respondent Haug: Lloyd G. Grandy, Ogdensburg (315) 393-1111

State of New York
Court of Appeals

To be argued Thursday, September 13, 2018

No. 104 People v Steven Baisley

Steven Baisley was charged in June 2014 with multiple misdemeanor counts of criminal contempt in the second degree and non-support of a child in the second degree for his alleged willful failure to make child support payments in the Village of Goshen. The Orange County Office of Child Support Enforcement reported that he owed more than $20,000 in support. Baisley moved to dismiss the charges on the ground that Village Court lacked jurisdiction over the matter.

Village Court dismissed the charges for lack of subject matter jurisdiction, saying, "Family Court has exclusive original jurisdiction over support or maintenance proceedings" under Family Court Act § 411, and has authority to impose sanctions for violations of support orders under section 454 and to "punish for contempt of court" under section 156 where no remedy for a violation is specified. "As such, a Justice Court lacks subject matter jurisdiction over support proceedings. It necessarily ... also lacks jurisdiction over allegations of contempt in support proceedings.... [T]he Family Court Act establishes that contempt is not appropriate for a violation of a support order. It is illogical that a justice court, not of record, would have the power to punish for contempt in a matter in which the Family Court holds exclusive jurisdiction and even it lacks contempt power." It said "this logic" also applies to the charges of non-support of a child in the second degree. "These charges, although a more detailed and specified version of the Criminal Contempt charge, nonetheless arise[] from the same Support Order that led to the Criminal contempt Charges."

The Appellate Term for the 9th and 10th Judicial Districts reversed and reinstated the charges for the reasons stated in its 2016 decision in People v Moody (53 Misc3d 31). The court said in Moody, "The jurisdiction of the Justice Court over criminal matters is regulated by the Criminal Procedure Law (see UJCA 2001[1]). Justice Courts are local criminal courts which possess 'trial jurisdiction of all offenses other than felonies' (CPL 10.30[1])..... Consequently, the Justice Court had jurisdiction to dispose of the charges of nonsupport of a child in the second degree and criminal contempt in the second degree. Although Family Court Act § 411 grants the Family Court 'exclusive original jurisdiction over proceedings for support or maintenance...,' such grant of exclusive jurisdiction has no bearing on the issue of the Justice Court's jurisdiction to prosecute criminal charges.... We note that Family Court Act § 156 does not preclude the prosecution of a criminal contempt charge in a local criminal court, since that section specifically provides that the Family Court has jurisdiction to hear violations of orders of the Family Court 'unless a specific punishment or other remedy for such violation is provided in this act or any other law,' such as is the case with Penal Law § 215.50(3)."

For appellant Baisley: Richard L. Herzfeld, Manhattan (212) 818-9019
For respondent: Orange County Assistant District Attorney Andrew R. Kass (845) 291-2050