



The most interesting case coming out of New York's appellate courts doesn't involve a legal issue at all. Rather, it's New York Court of Appeals Chief Judge Rowan Wilson's concurrence in a criminal case about how the criminal justice system should be flexible to address the mental health needs of individuals, rather than reflexively sentencing them to incarceration for minor offenses. With that said, let's take a look what has been happening in New York's appellate courts over the past week.

COURT OF APPEALS

CRIMINAL LAW

People v Messano, 2024 NY Slip Op 00097 (Ct App Jan. 11, 2024)

Issue: Should drug-related contraband that the police asserted was recovered from plain view be suppressed as the fruit of an unconstitutional search?

Facts: The police observed the defendant pull his car into a closed business next to another parked car, exit his vehicle, lean his head through the window of the other car, and have a conversation with the driver. From the police officer's experience, he believed that defendant had engaged in a hand-to-hand drug transaction, but admitted on cross examination that he did not see one occur. A third individual arrived who the officer knew had been previously convicted of a drug offense, and the officer approached the defendant. The officers frisked defendant, finding nothing, and placed defendant at the rear of his car, where he was not free to leave. The officer "then approached defendant's car, looked through the open driver's-side window and saw what he described as 'a rolled dollar bill and white substance on the driver's side seat.' Based on his training and experience, he concluded the powder was cocaine." Defendant moved to suppress the evidence at his subsequent criminal trial, and the trial court denied the motion. A divided panel of the Fourth Department affirmed.

Holding: The Court of Appeals held that the Fourth Amendment "permit[s] the police to conduct brief investigative stops of individuals in public places that fall under 'an entire rubric of police conduct . . . which historically has not been, and as a practical matter could not be, subjected to the warrant procedure', but only when there is 'a particularized and objective basis for suspecting the particular person stopped of criminal activity.'" Searches without a warrant are per se unreasonable under the Fourth Amendment, subject to limited exceptions, one of which is when evidence is in the plain view of the police. As the Court explained, however, "[u]nder this plain view doctrine, . . . law enforcement officers may properly seize an item in plain view without a warrant if, in pertinent part, they are lawfully in a position to observe the item . . . That justification is absent—and the doctrine therefore does not legitimize a warrantless seizure of property—when an officer gains the vantage point from which they view incriminating evidence by violating a constitutional prohibition against unreasonable searches and seizures." Here, the Court held that the officers' observations did not give them reasonable suspicion that defendant had engaged in a drug transaction, and thus had no legal basis to detain the defendant or be in a lawful position to view the drug-related contraband. The Court, therefore, reversed the defendant's conviction and dismissed the indictment against him.

CRIMINAL LAW

People v Greene, 2024 NY Slip Op 00096 (Ct App Jan. 11, 2024)

Issue: Although the legal issue in this case involved multiplicitous convictions, the real point of interest involved not that legal issue, but Chief Judge Rowan Wilson's concurring opinion discussing how the criminal justice system can turn "minor antisocial behavior" into needless criminal convictions.

Facts: One night in 2017, the defendant and another person engaged in a yelling match on the streets of New York City, after they nearly collided while the defendant was riding a bicycle and the other person was walking. The argument lasted about 5 minutes, and at the end of it, the other person attempted to take the defendant's picture with her phone, the defendant grabbed the phone and then rode off with it. The person got her phone back about 30 minutes later when the police apprehended the defendant. The defendant then sat in pretrial detention for 13 months, and was ultimately convicted of a count of larceny and 2 counts of perjury, and sentenced consecutively to a total of 4 to 8 years incarceration.

Holding: In Chief Judge Wilson's concurrence, he explained that at the time of the defendant's conviction, it was clear that the defendant was in need of mental health services, rather than facing significant jail time for a yelling match on the NYC streets. Chief Judge Wilson explained, "[t]reating incarceration as the default response to individuals convicted of low-level offenses has outsized deleterious conse-

quences that, ultimately, make our communities less safe: the cycle of incarceration further destabilizes these individuals; mental health treatment in prison is costlier than community-based treatment; individuals with mental illness are at greater risk of detention in prison and extended incarceration; prison mental health resources are often inadequate; and individuals living with mental illness face greater risk of harm and abuse while behind bars. Another approach worth pursuing is sometimes referred to as ‘restorative justice’—a non-punitive approach designed to facilitate reconciliation between an offender and a victim through dialogue and interpersonal restitution . . . A restorative justice approach would have not only prevented the protracted prosecution—which burdened both parties, taxpayers and the courts—but it might have given [the other person] an opportunity to express her frustration with [the defendant] in a direct and productive dialogue, and an opportunity to feel validated in that completely reasonable frustration. Furthermore, it might have given the parties the opportunity to reach conciliation instead of continuing to confront each other in an adversarial posture, and it could have given the system a chance to offer [the defendant] mental health support in a community, non-carceral setting.”

FIRST DEPARTMENT

CONTRACT LAW

Supply Co., LLC v Hardy Way, LLC, 2024 NY Slip Op 00058 (1st Dept Jan. 9, 2024)

Issue: When does the special facts doctrine apply in connection with a plaintiff’s claim that it was fraudulently induced to enter into a contract?

Facts: After the principals of Iconix Brand Group were convicted of federal charges for accounting fraud, the plaintiff, a licensee, brought an action for fraudulent inducement of the license agreement that it had entered. Supreme Court dismissed the action.

Holding: The First Department held that although the plaintiff had established the two elements of the special facts doctrine—“the criminal behavior of nonparties Neil Cole (the former chief executive officer of defendant Iconix Brand Group, Inc.) and Seth Horowitz (Iconix’s former chief operating and financial officer) was peculiarly within defendants’ knowledge, and plaintiff could not have discovered this information through the exercise of ordinary diligence”—that alone did not warrant application of the doctrine. Rather, the Court held, “plaintiff did not show that this was an essential fact, or that defendants’ superior knowledge of this fact rendered the license agreement inherently unfair.” Thus, Supreme Court had properly dismissed the action.

SECOND DEPARTMENT

ALCOHOLIC BEVERAGE CONTROL LAW

JRC Beverage, Inc. v K.P. Global, Inc., 2024 NY Slip Op 00067 (2d Dept Jan. 10, 2024)

Issue: Does section 55-c of the Alcoholic Beverage Control Law obligate a beer importer, which acquired its importation rights relating to a particular beer brand directly from the manufacturer, to honor a wholesale distribution agreement entered into by the prior importer of the same beer brand?

Facts: Alcoholic Beverage Control Law § 55-c governs commercial relationships between brewers and beer wholesalers, and generally provides that the sale of beer from breweries to wholesalers must be by written agreement and that “[n]o brewer may cancel, fail to renew, or terminate [such] an agreement” without good cause. The statute narrowly defines what constitutes good cause for cancellation or termination of distribution agreements, and provides further that a “brewer” includes any “successor to a brewer.” In this case, the exclusive wholesaler of a South Korean beer appointed the plaintiff as the exclusive importer of the South Korean beer in New York. When the South Korean brewer had issues with the wholesaler, however, it terminated the wholesaler’s agreement and chose a new wholesaler for the South Korean beer, which in turn entered an agreement with a different importer for New York. Plaintiff sued, arguing that since it was the appointed importer in New York, section 55-c of the ABC Law protected its rights, even though a new wholesaler had been chosen with which the plaintiff had no privity of contract.

Holding: Noting that “existing case law does not squarely address whether a beer importer acquiring importation rights directly from a beer manufacturer, rather than from a prior importer, is a successor to a brewer within the meaning of the statute,” the Second Department held that “the generous protections afforded to beer wholesalers under Alcoholic Beverage Control Law § 55-c extend to circumstances such as the present one, and obligate an importer to honor a wholesale distribution agreement entered into by the prior importer of the same brand, even where, as here, there is no relationship or privity of contract between the prior importer and the new importer. [U]nder the specific language of New York’s law, the defendant importer in this action is a ‘successor to a brewer’ within the meaning of Alcoholic Beverage Control Law § 55-c, and the plaintiff wholesaler has demonstrated as a matter of law that the defendant importer failed to honor, without good cause, the wholesale distribution agreement entered into by the plaintiff and the prior importer.”

THIRD DEPARTMENT

SEALING OF COURT RECORDS

Matter of Cyprium Therapeutics, Inc. (Curia Global, Inc.), 2024 NY Slip Op 00115 (3d Dept Jan. 11, 2024)

Issue: When may a court seal the records contained in a court file from public view?

Facts: Petitioner is a biotechnology company that has developed a novel therapy for Menkes disease, a rare but severe childhood illness for which there is currently no treatment approved by the federal Food and Drug Administration. When disputes arose with the potential commercial manufacturer of the drug, the petitioner commenced this proceeding under temporary seal, to enjoin respondent from ceasing performance of its contractual obligations pending arbitration. Supreme Court granted petitioner's application for a preliminary injunction, but while the proceeding was pending, respondent moved to permanently seal 32 docket entries and redact 18 others on the ground that they contained confidential business information. Respondent later narrowed the request to seal to 30 docket entries and to redact 42 others. When petitioner opposed, respondent argued that the entire proceeding should be sealed. Supreme Court ultimately denied the sealing requests and ordered the entire docket unsealed.

Holding: Noting that "there is a presumption that the public has a right of access to the courts to ensure the actual and perceived fairness of the judicial system, as the bright light cast upon the judicial process by public observation diminishes the possibilities for injustice, incompetence, perjury, and fraud," the Third Department held that confidentiality in a court docket is the exception, not the rule, and that the party seeking to seal bears the "burden to demonstrate compelling circumstances to justify restricting public access." The Court held that Supreme Court properly denied the request to seal the entire record because the respondent failed to overcome the "significant public concern surrounding an injunction pertaining to the manufacture and commercialization of a lifesaving drug for babies and infants." The Court also held that the more limited requests to seal were also properly denied because "a number of records sought to be shielded from public view in both proposals were central to its underlying decision to grant a preliminary injunction — a determination that required, among other things, an analysis of the merits of the parties' respective positions" and that "the proposed redactions would render the docket unintelligible and inappropriately deprive the public of a coherent record of this litigation."

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