



Does New York's Revenge Porn Statute authorize the courts to exercise personal jurisdiction over people who post intimate images online that are viewable in New York, or just over the websites that host those images? The First Department held recently that the Revenge Porn Statute only authorizes jurisdiction over the websites, and does not extend to the people outside New York who post the intimate images. Let's take a look at that opinion and what else has been happening in New York's appellate courts over the past week.

Special thanks this week go out to my outstanding colleagues Justine Case-Fitzgerald and Viktoria Yudchits, who were instrumental in preparing the case summaries.

FIRST DEPARTMENT

CIVIL PROCEDURE, ISSUANCE OF SUBPOENAS

[Stafford v EV Transp. Servs., Inc., 2024 NY Slip Op 04840 \(1st Dept Oct. 03, 2024\)](#)

Issue: May subpoenas be served outside the State of New York, so that a party may be compelled to answer the subpoenas or be held in contempt?

Facts: Plaintiff filed a summons, notice of motion for summary judgment and the supporting papers in lieu of a complaint pursuant to CPLR 3213 to collect on unpaid loans. After defendant failed to appear or otherwise submit any evidentiary proof, the court grant plaintiff's motion for summary judgment, and a money judgment was eventually entered. Plaintiff then served the defendant in Massachusetts with subpoenas seeking defendant's financial business records and information concerning its assets. After defendant again failed to respond, plaintiff moved to compel and/or for contempt. In opposition, defendant argued that the subpoenas were invalid on numerous grounds, including that service of subpoenas is not authorized outside of New York's borders. Supreme Court granted plaintiff's motion to compel, holding that the subpoenas were properly served and ordered that defendants respond to the subpoenas or be subject to contempt.

Holding: The First Department reversed, holding that defendant was not required to comply with the subpoenas because service outside of New York State rendered the subpoenas unenforceable. Here, the Court noted the decision was "consistent with New York's constitutional limitation on Supreme Court's authority to serve subpoenas outside the State of New York." In particular, article VI, § 1(c) of the New York Constitution provides that "[a]ll processes, warrants and other mandates of the court of appeals, the supreme court including the appellate divisions thereof, the court of claims, the county court, the surrogate's court and the family court may be served and executed in any part of the state." As the Court explained, this section has long been read restrictively to preclude service of subpoenas outside of New York.

CIVIL PROCEDURE, PERSONAL JURISDICTION

[Jane Doe v Blackrabbit 19, et al., 2024 NY Slip Op 04813 \(1st Dept Oct. 03, 2024\)](#)

Issue: Does Civil Rights Law § 52-b, New York's Revenge Porn Statute, confer personal jurisdiction over an individual who posts intimate images on websites that are viewable in New York?

Facts: Plaintiff and Defendant were involved in a relationship from 2015 until 2017. During the course of their relationship, intimate images of the pair were captured and exchanged. At all relevant times, both Plaintiff and Defendant resided in Texas. In January 2019, after Plaintiff moved to New York, intimate images from her relationship with Defendant began appearing online without her consent. Plaintiff alleged that the screennames responsible for uploading the intimate images belonged to Defendant and included the screennames as defendants in the complaint. After Defendants were served in Texas, they moved to dismiss for lack of personal jurisdiction. Plaintiff argued that the court could exercise personal jurisdiction over Defendant under New York's long arm statute, CPLR 302(a)(3) because Defendant was employed by CitiGroup, a company with headquarters in New York, and under Civil Rights Law § 52-b(5), which extends personal jurisdiction as permitted by federal law and the United States Constitution to allow a claim "against a 'website' that 'hosts or transmits' intimate images of a New York resident without consent." Supreme Court dismissed the claim for lack of personal jurisdiction, holding that Defendant's employment in the State of Texas by a corporate entity with a headquarters in New York did not satisfy the requirements of CPLR § 302 (a) (3). Distinguishing between a "website" and an "individual," the Court held that Civil Rights Law § 52-b (5) authorizes jurisdiction over a website, but does not extend to a person who posted the images on the website.

Holding: The First Department affirmed, holding that “Plaintiff’s complaint does not state a cause of action against a website under Civil Rights Law § 52-b (5), but against an individual using various accounts or usernames on [various] websites.” Here, the Court interpreted “website” to be in accordance with its ordinary and accepted meaning. Because Civil Rights Law § 52-b (5) confers personal jurisdiction over a “website,” and not an individual who posts on the website, personal jurisdiction could not be exercised over Defendant.

THIRD DEPARTMENT

EMPLOYMENT LAW, UNEMPLOYMENT INSURANCE BENEFITS

Matter of Bury (Consumer Reports Inc.--Commissioner of Labor), 2024 NY Slip Op 04855 (3d Dept Oct. 3, 2024)

Issue: Was an employee disqualified from receiving unemployment insurance benefits after he voluntarily left his employment without good cause?

Facts: “Claimant was employed as an acquisition agent for the employer . . . Due the COVID-19 pandemic, claimant worked remotely from March 2020 until October 2021. As COVID-19 restrictions eased, claimant was informed that he was required to return to in-person work. However, in October 2021, claimant was placed on short-term disability leave based upon a medical diagnosis of anxiety and agoraphobia and was scheduled to return to work in April 2022. Upon expiration of his short-term disability leave, claimant, who wanted to continue working 100% remotely, was given the option of returning to work, applying for long-term disability leave at 60% pay or taking an unpaid leave of absence. Claimant did not return to work or avail himself of the other options, prompting the employer to conclude that he had voluntarily terminated his employment.” Claimant then applied for unemployment insurance benefits. Although the Department of Labor initially determined that Claimant was eligible for benefits, following a hearing, an Administrative Law Judge held that “claimant was disqualified from receiving unemployment insurance benefits because he had voluntarily left his employment without good cause.” The Unemployment Insurance Appeal Board agreed.

Holding: The Third Department affirmed, holding that “substantial evidence” supported the Board’s finding that Claimant was not eligible for unemployment insurance benefits. The Court explained that certain grounds may disqualify a claimant “from receiving unemployment insurance benefits,” including where the claimant “fails to return to work or to take reasonable steps to protect his or her employment following the expiration of an authorized leave of absence.” The Court held that the record here demonstrated that “Claimant did not return to work following the expiration of his short-term leave, did not apply for long-term disability leave or request an unpaid leave of absence. Further, there was no medical evidence that he was advised to leave his employment following the expiration of his short-term leave.” The Court thus concluded that Claimant “was disqualified from receiving unemployment insurance benefits because he voluntarily left his employment without good cause.”

FOURTH DEPARTMENT

CRIMINAL LAW, INEFFECTIVE ASSISTANCE OF COUNSEL

People v Stewart, 2024 NY Slip Op 04863 (4th Dept Oct. 4, 2024)

Issue: Was defendant deprived of his right to effective assistance of counsel due to defense counsel’s (1) failure to object to the prosecutor’s improper comments during *voir dire* and (2) failure to object to the County Court’s unlawful procedure of having the parties alternate using peremptory challenges of prospective jurors?

Facts: The defendant was convicted of assault in the first degree, kidnapping in the second degree, criminal possession of a weapon in the third degree, and menacing in the second degree. The defendant appealed, arguing that (1) County Court “violated CPL 270.15 (2) with respect to the sequence for exercising peremptory challenges”; (2) “he was denied the right to be present for the court’s response to a substantive jury note”; (3) “the court failed to respond meaningfully to a jury note requesting clarification on the kidnapping charge”; and (4) “he was deprived of his right to effective assistance of counsel.”

Holding: The Fourth Department reversed the conviction, holding that the defendant was deprived of his right to effective counsel. Specifically, the Court emphasized that “defense counsel made several significant errors at trial and that the cumulative effect of those errors was prejudicial enough to deprive defendant of meaningful representation and a fair trial.”

The Court explained, “[t]he first error occurred during *voir dire* when defense counsel failed to object to patently improper comments from the prosecutor regarding his ability to sleep at night now that he is a prosecutor and no longer a defense attorney.” The Court noted that the defense counsel’s failure to object to the prosecutor’s improper comment the first time might be excusable, stating that “[p]erhaps it was a legitimate strategy for defense counsel not to object to the first improper comment of that nature given that defense counsel may not have wanted to draw more attention to the prejudicial comment.” The Court even further noted that “defense counsel might be excused for not objecting when the prosecutor repeated the comment to the same group of prospective jurors.” The Court, however, held that it could “discern no legitimate strategy . . . for defense counsel to remain quiet when the prosecutor made the same comment for the third, fourth and fifth times during *voir dire*,” emphasizing that “[a]t some point, defense counsel was obligated to protect defendant from the prejudice arising from the repeated acts of prosecutorial misconduct and, at the very least, request a curative instruction

from the court.” Citing CPL 270.15 (2), the Court further held that the defense counsel “also erred in not objecting—and, indeed, consenting—to the court’s unlawful procedure of having the parties alternate which side went first in declaring whether they wished to exercise a peremptory challenge to a particular prospective juror.”

The Court concluded that “[v]iewing the evidence, the law and the circumstances of this case in totality and as of the time of the representation, [o]ur review of this record indicates that defendant was not afforded meaningful representation and was therefore deprived of a fair trial.”

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