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Summarizing recent significant New York appellate cases

The Court of Appeals recently took a look at harmless error analysis in a criminal defendant's challenge to a guilty plea, what a criminal defendant must show to be entitled to charge the jury with a justification defense to murder, whether a constitutional right to assigned counsel exists in administrative proceedings, and interesting to me at least, when the time to take an appeal or move for leave to appeal begins to run following service of an appealable order with notice of its entry by filing on NYSCEF. Let's take a look at those opinions and what else has been happening in New York's appellate courts over the past week.

COURT OF APPEALS

CRIMINAL LAW, GUILTY PLEA, HARMLESS ERROR ANALYSIS

***People v Robles*, 2024 NY Slip Op 05819 (Ct App Nov. 21, 2024)**

Issue: **When and how does harmless error analysis apply to a criminal defendant's guilty plea?**

Facts: "In response to a report of shots fired, two officers approached defendant and, after a struggle, recovered a handgun from him. Prior to any Miranda warnings being administered, an officer asked defendant, 'Hey, Eddie, man, what's going on? Are you all right? Are you okay?' Defendant responded, 'Bro, you saw what I had on me. I was going to do what I had to do.' Defendant was indicted on various charges, including second degree criminal possession of weapon." Defendant moved to suppress his confession and the gun, and the trial court denied both requests. Afterwards, Defendant pled guilty to attempted second degree weapon possession, noting for the Court that he intended to appeal the denial of his suppression motion. On appeal, the Appellate Division agreed that his confession should have been suppressed, but held that the error was harmless, holding that "because the gun would have been admissible at trial . . . there is no reasonable possibility that the trial court's error in failing to suppress defendant's statement admitting possession of the firearm contributed to his decision to plead guilty."

Holding: The Court of Appeals reversed, noting that applying harmless error analysis to a guilty plea is particularly difficult "because a guilty plea simply reflects the fact that for some reason, sufficient to the defendant, that defendant decided to waive his or her trial rights. As a result, convictions based on guilty pleas generally are not amenable to harmless error review. This 'general' rule, however, is not absolute. Where, as here, the error is of constitutional dimension, we have held that, in addition to evaluating whether the People's remaining proof in the case constitutes overwhelming proof of defendant's guilt, harmless error review must also analyze whether there is a reasonable possibility that the error contributed to the defendant's decision to plead guilty. Where there is any reasonably possibility that the error contributed to the plea, the conviction must be reversed."

This case, the Court held, was not one of those exceeding rare cases where there was no reasonable chance that the error contributed to defendant's decision to plead guilty. The minimal record here, the Court noted, was "ambiguous at best as to defendant's motivation in pleading guilty. Although defendant asserted during the plea colloquy that he was 'pleading guilty because it's a good deal,' he may only have believed that 'in the face of all the evidence' admissible at the time, including his highly incriminating post-arrest statement 'you saw what I had on me.' Moreover, when entering his plea, defendant affirmatively sought assurances from the court that he could appeal the suppression determination, indicating the importance he placed on that adverse ruling." Thus, the Court determined that it "cannot say that defendant's decision to plead guilty was unaffected by the court's erroneous suppression ruling, and therefore his guilty plea must be vacated."

CRIMINAL LAW, JUSTIFICATION DEFENSE

***People v Castillo*, 2024 NY Slip Op 05817 (Ct App Nov. 21, 2024)**

Issue: **Was the criminal defendant entitled to a jury charge for a justification defense on a second-degree murder charge where he was not the initial aggressor and the victim threatened him by holding a razor blade to his face before the defendant stepped backward and shot the victim?**

Facts: Following a confrontation over a drug transaction that resulted in a shooting and a murder charge, "an eyewitness testified that the victim confronted defendant in the barbershop's doorway, told him he could not leave, and held a razorblade against defendant's face, threatening to cut him from ear to ear. Defendant then took a step back, drew his gun, and shot the victim six times. The eyewitness testified that defendant and the victim were facing each other when defendant first fired, but that the victim was facing away from defendant as he continued to fire. Although his body turned, the victim did not move from where he was standing. The altercation lasted

approximately thirty seconds, and the shooting itself only approximately five seconds from the first to the last shot." During the trial, the defendant asked the trial court to charge the jury with a justification defense. The trial court declined, concluding that justification was not "an appropriate charge" based on its review of the testimony, photographs, the razor blade, and "the relative sizes and ages, descriptions of the two parties involved." The jury convicted defendant on both second-degree murder and second-degree weapon possession counts. The Appellate Division affirmed, holding that because "defendant stepped back, and the victim did not cut him," and that, even if the two shots to the victim's front were justified, "there was no reasonable view of the evidence . . . that defendant . . . was justified in firing four additional shots into the victim's back."

Holding: The Court of Appeals reversed, explaining that "[t]he defense of justification provides that a person may use physical force to defend himself against an assailant's 'imminent use of unlawful physical force,' but does not authorize the use of 'deadly physical force unless the person reasonably believes that the assailant is using or about to use deadly physical force' (Penal Law § 35.15). When considering a request for a justification charge, courts examine the evidence in the light most favorable to the defendant, and must provide the instruction if there is any reasonable view of the evidence that defendant was justified in his actions. Justification has both a subjective requirement, that 'defendant actually believed he was threatened with the imminent use of deadly physical force,' and an objective requirement, that defendant's 'reactions were those of a reasonable man acting in self-defense.' The defense does not automatically apply throughout the entirety of an encounter—a defendant who may be justified in using deadly physical force at the start of an encounter loses the right to use such force 'at the point he can no longer reasonably believe the assailant still poses a threat to him.'"

Here, the Court held, "under the appropriate standard, there is a reasonable view of this evidence that defendant was justified in his actions." The "victim was the initial aggressor" and the People conceded that the defendant faced an "imminent threat of deadly force at the time the victim held the blade to his face." Just because the defendant stepped back a few steps from the victim to shoot "does not mean he could no longer have reasonably believed the victim still posed a threat to him. Given the rapid unfolding of events—there was testimony that the entire confrontation was over in thirty seconds—jurors could also conclude that the shots to the victim's back were justified." Finally, the Court noted, there was "a reasonable view of the evidence that defendant could not safely retreat into the back of the barbershop at the time he used deadly physical force." Thus, the Court held that defendant was entitled to a jury charge for a justification defense, and his murder conviction should have been reversed.

ADMINISTRATIVE LAW, RIGHT TO COUNSEL IN ADMINISTRATIVE PROCEEDING

***Matter of Jeter v Poole*, 2024 NY Slip Op 05868 (Ct App Nov. 25, 2024)**

Issue: **Does an individual who is subject to a report to the Statewide Central Register of Child Abuse and Maltreatment, which is used to "inform child care providers and agencies that a person has a substantiated report of child abuse or maltreatment for the purpose of regulating their future employment or licensure," have a constitutional right to counsel in those administrative proceedings?**

Facts: After petitioner's daughter disclosed that petitioner had hit her with an extension cord, petitioner and the daughter's father, who had custody, were brought up on Family Court Act Article 10 neglect charges. Family Court authorized an adjournment in contemplation of dismissal, subject to conditions, and when petitioner satisfied those conditions, the neglect proceeding was dismissed in the interests of justice. The police officer who interviewed the daughter, however, filed a report with the Statewide Central Register of Child Abuse and Maltreatment (SCR) regarding the maltreatment, and the New York City Administration for Children's Services found the report substantiated. Petitioner challenged the finding, and the "New York State Office of Children and Family Services concluded that a fair preponderance of the evidence supported a determination that petitioner had maltreated [the daughter] and that the maltreatment was relevant and reasonably related to employment, licensure, or certification in the child care field." It then scheduled a fair hearing on the substantiated report. Petitioner represented herself, and following the hearing, "OCFS issued a decision dated September 22, 2020, in which it concluded that ACS proved the allegations by a fair preponderance of the evidence and that petitioner's actions were relevant and reasonably related to child care employment." In the subsequent Article 78 proceeding, petitioner's new counsel argued that she had a constitutional right to counsel in the SCR proceeding. The Appellate Division disagreed, and upheld the determination.

Holding: The Court of Appeals held that petitioner did not have a constitutional right to assigned counsel in the administrative SCR proceedings. The Court reasoned, "[a]lthough petitioner has a protected interest in her reputation and ability to secure employment in her chosen field, those interests alone are not enough to give rise to a constitutional right to the assistance of counsel. Inclusion on the SCR—unlike Family Court article 10 proceedings—does not impact rights that we have concluded warrant recognition of a constitutional right to assigned counsel in civil proceedings, such as physical liberty, bodily autonomy, or care and custody of one's children. Property interests typically do not give rise to a constitutional right to assigned counsel, including the kind of property interests at stake in administrative hearings to address professional licenses or certifications. 'Due process considerations in such cases require only that a party to an administrative hearing be afforded the opportunity to be represented by counsel.' Petitioner was provided with that opportunity here. Moreover, the existing statutory procedures are sufficient to ensure petitioner's due process rights are protected, such that we cannot say that fairness can only be achieved for the indigent with the aid of assigned counsel, however desirable that assistance might be." Since the Legislature has not provided a statutory right to assigned counsel in administrative SCR proceedings, unlike those conducted under the Sex Offender Registration Act, the Court held that the petitioner was not entitled to assigned counsel.

CIVIL PROCEDURE, TIMELINESS OF MOTION FOR LEAVE TO APPEAL

***Ruisech v Structure Tone Inc.*, 2024 NY Slip Op 05866 (Ct App Nov. 25, 2024)**

Issue: **When an appealable order is served with notice of its entry on NYSCEF, when does the time to serve a motion for leave to appeal begin to run?**

Facts: Now this is a question that has long piqued the interest of appellate nerds like me. When you serve an order with notice of entry, the time to appeal runs 30 days from service, with a short extension depending on how service was made. If notice of entry is served personally, no extension is given and the time to appeal or move for leave to appeal runs 30 days following the date of service. If service is by overnight mail, however, the CPLR provides a 1-day extension, and for regular mail service, you get a 5-day extension. Since the advent of service through the NYSCEF filing system, the CPLR has not been updated to say whether any extension applies to the normal 30-day period to appeal or move for leave to appeal. The cautious lawyer, in those cases, would caution a client to do so within the original 30-day period, to avoid any possible question of timeliness.

In this case, one of the defendants served the Appellate Division order with notice of entry, by filing it on the trial court NYSCEF docket, at least one day before the other defendants did. When plaintiff served its motion for leave to appeal on the 30th day as to the other defendants, its motion was served on the 31st day as to Structure Tone, the earlier filing defendant. Structure Tone, thus, moved to dismiss the appeal as untimely.

Holding: The Court of Appeals granted the motion to dismiss and dismissed the appeal as to Structure Tone as untimely. The Court explained two important points for appellate practice: (1) timeliness is evaluated on a party-by-party basis, and so each separately represented defendant must serve an appealable order with notice of its entry to start the appeal or motion clock, and (2) "in an electronic filing case, service via filing on the NYSCEF docket for the trial court is effective to start CPLR 5513 (b)'s 30-day clock" even if it is an Appellate Division order that is being served with notice of entry. The Court reasoned, "[t]o be effective to start CPLR 5513 (b)'s 30-day clock, service must comply with CPLR 2103. CPLR 2103 (b) (7), in turn, empowers the Chief Administrative Judge to authorize electronic service. The Chief Administrative Judge has exercised this authority by promulgating Uniform Rules for Trial Courts (22 NYCRR) § 202.5-b (h) (2), which provides that in actions—such as this one—that are subject to electronic filing, parties may serve 'notice of entry of an order' by filing 'a copy of the order . . . and written notice of its entry' on its [NYSCEF] site, thus causing that site to transmit 'notification of receipt of the documents, which shall constitute service thereof by the filer.' The relevant rules are not limited to service of trial court orders; and they neither prohibit nor render ineffective service of an intermediate appellate court order with notice of its entry by filing on the trial court's NYSCEF docket—as opposed to the NYSCEF docket of the intermediate appellate court."

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