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Due Process

CITY COURT

RENSSELAER COUNTY

People v. Boulton[185]
(decided March 3, 1995)

Defendant, William B. Boulton, challenged the constitutionality of New York Vehicle and Traffic Law section 1193(2)(e)(7)(a)[186] which mandated that the court, during a defendant's arraignment for driving under the influence of drugs or alcohol, suspend the defendant's driver's license pending the prosecution of said charge.[187] Defendant claimed that the suspension of his license violated the Due Process and Equal Protection Clauses of the Federal[188] and New York State Constitutions[189] and in addition, the Separation of Powers Doctrine.[190]

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185. 164 Misc. 2d 604, 625 N.Y.S.2d 428 (City Ct. Rensselaer County 1995).

186. N.Y. VEH. & TRAF. LAW § 1193(2)(e)(7)(a) (McKinney Supp. 1995). Section 1193(2)(e)(7)(a) provides in pertinent part:

> A court shall suspend a driver's license pending prosecution, of any person charged with a violation of subdivision two or three of section eleven hundred ninety-two of this article [operating a motor vehicle while under the influence of drugs or alcohol] who, at the time of arrest, is alleged to have had .10 of one percent or more by weight of alcohol in such driver's blood as shown by chemical analysis of blood, breath, urine or saliva . . . .

Id.

187. *Boulton,* 164 Misc. 2d at 605, 625 N.Y.S.2d at 429.

188. U.S. CONST. amend. XIV, § 1. This provision provides in pertinent part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . ." *Id.* U.S. CONST. amend. XIV, § 1. This provision provides in pertinent part: "No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws." *Id.*

189. N.Y. CONST. art. I, § 6. This provision provides in pertinent part: "No person shall be deprived of life, liberty or property without due process of law." *Id.* N.Y. CONST. art. I, § 11. This provision provides in pertinent part: "No person shall be denied the equal protection of the laws of this state or any subdivision thereof." *Id.*

190. *Boulton,* 164 Misc. 2d at 605, 625 N.Y.S.2d at 429. U.S. CONST. art. III, § 2, cl. 1. This provision provides in pertinent part: "[J]udicial Power

The city court held that the defendant's right to due process was not violated.[191] The court reasoned that due process was afforded to the defendant by the process which permitted his driver license to be returned upon his ex parte presentation of evidence introduced to rebut the court's decision.[192] The court also noted that although there are instances when the judiciary's responsibilities encroach on those allocated to the Executive Branch, the application of section 1193(2)(e)(7)(a) of the Vehicle and Traffic Law is not an example of one of those instances.[193] Thus, there was no violation of the Separation of Powers Doctrine.[194]

Lastly, after applying the rational basis test, the court held that the defendant was not deprived of his equal protection rights.[195] Although a person who is accused of driving while intoxicated in violation of Vehicle and Traffic Law section 1192(2) may be treated differently from those who are accused of driving while intoxicated or driving while impaired by the use of a drug, in violation of Vehicle and Traffic Law sections 1192(3)[196] and 1192(4),[197] the differences in treatment do not violate either State or Federal Equal Protection Clauses.[198]

The defendant was accused of driving while intoxicated per se, driving while intoxicated and driving in excess of the maximum speed limit in violation of Vehicle and Traffic Law sections

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shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . . . ." *Id.*

191. *Boulton*, 164 Misc. 2d at 607, 625 N.Y.S.2d at 430.

192. *Id.*

193. *Id.* at 608, 625 N.Y.S.2d at 431.

194. *Id.*

195. *Id.*

196. N.Y. VEH. & TRAF. LAW § 1192(3) (McKinney Supp. 1995). This section provides in pertinent part: "No person shall operate a motor vehicle while in an intoxicated condition." *Id.*

197. N.Y. VEH. & TRAF. LAW § 1192(4) (McKinney Supp. 1995). This section provides in pertinent part: "No person shall operate a motor vehicle while the person's ability to operate such a motor vehicle is impaired by the use of a drug as defined in this chapter." *Id.*

198. *Id.*

1192(2), 1192(3) and 1180(d), respectively.[199] Subsequently, the court suspended his driver's license pursuant to section 1193(2)(e)(7)(a) of the Vehicle and Traffic Law.[200] In its notice of motion in support of an order to terminate the suspension, the defense raised three constitutional claims.[201]

First, the defendant contended that Vehicle and Traffic Law section 1193(2)(e)(7)(a) deprived him of due process because he was not entitled to a preliminary hearing before the suspension of his license.[202] Second, the defendant argued that the court violated the separation of powers provisions of the Federal and New York State Constitutions.[203] Third, the defense claimed that the suspension violated his right to equal protection because a driving while intoxicated per se violation, pursuant to section 1192(2) of the Vehicle and Traffic Law, is treated differently from driving while intoxicated and driving while impaired by the use of a drug violation pursuant to Vehicle and Traffic Law sections 1192(3) and 1192(4).[204]

In its due process analysis, the court first examined the two-prong test for suspending a drivers license set forth in Vehicle and Traffic Law section 1193(2)(e)(7)(b).[205] Before the court

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199. *Id.* at 605, 625 N.Y.S.2d at 429.

200. *Id. See supra* note 186.

201. *Boulton*, 164 Misc. 2d at 605, 625 N.Y.S.2d at 429.

202. *Id.* at 606-07, 625 N.Y.S.2d at 430.

203. *Id.* at 608, 625 N.Y.S.2d at 430-31.

204. *Id.* at 608, 625 N.Y.S.2d at 431.

205. N.Y. VEH. & TRAF. LAW § 1193(2)(e)(7)(b) (McKinney Supp. 1995). Section 1193(2)(e)(7)(b) provides in pertinent part:

> In order for the court to impose such suspension it must find that the accusatory instrument conforms to the requirement of section 100.40 of the criminal procedure law and there exists reasonable cause to believe that the holder operated a motor vehicle while such holder had .10 of one percent or more by weight of alcohol in his or her blood as was shown by chemical analysis of such person's blood, breath, urine or saliva, made pursuant to the provisions of section eleven hundred ninety-four of this article. At the time of such license suspension the holder shall be entitled to an opportunity to make a statement regarding these two issues and to present evidence tending to rebut the court's findings.

Id.

may suspend a license, the court must first find that "the accusatory instrument conforms to the requirements of [CPL] 100.40."[206] In the event that it does not, the court must return the license and "either divest itself of jurisdiction or require the prosecutor to amend the defective accusatory instrument."[207] As

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206. *Boulton*, 164 Misc. 2d at 606, 625 N.Y.S.2d at 429 (quoting N.Y. VEH. & TRAF. LAW § 1193(2)(e)(7)(b) (McKinney Supp. 1995)). *See* N.Y. CRIM. PROC. LAW § 100.40 (McKinney 1992). Section 100.40 provides:

1. An information, or a count thereof, is sufficient on its face when:
   (a) It substantially conforms to the requirements prescribed in section 100.15; and
   (b) The allegations of the factual part of the information, together with those of any supporting depositions which may accompany it, provide reasonable cause to believe that the defendant committed the offense charged in the accusatory part of the information; and
   (c) Non-hearsay allegations of the factual part of the information and/or of any supporting depositions establish, if true, every element of the offense charged and the defendant's commission thereof.
2. A simplified information is sufficient on its face when, as provided by subdivision one of section 100.25, it substantially conforms to the requirement therefor prescribed by or pursuant to law; provided that when the filing of a supporting deposition is ordered by the court pursuant to subdivision two of said section 100.25, a failure of the complainant police officer or public servant to comply with such order within the time provided by subdivision two of said section 100.25 renders the simplified information insufficient on its face.
3. A prosecutor's information, or a count thereof, is sufficient on its face when it substantially conforms to the requirement prescribed in section 100.35.
4. A misdemeanor complaint or a felony complaint, or a count thereof, is sufficient on its face when:
   (a) It substantially conforms to the requirements prescribed in section 100.15; and
   (b) The allegations of the factual part of such accusatory instrument and/or any supporting depositions which may accompany it, provide reasonable cause to believe that the defendant committed the offense charged in the accusatory part of such instrument.

Id.

207. *Boulton*, 164 Misc. 2d at 606, 625 N.Y.S.2d at 429.

the court stated, this "CPL 100.40 review . . . which requires a court to suspend a license pending prosecution does not afford the defendant any more due process than he or she is otherwise already entitled to."[208]

The second part of the analysis requires a finding of "reasonable cause" under Vehicle and Traffic Law section 1193(2)(e)(7)(b).[209] The court then compared a felony complaint to "simplified traffic information" and a "supporting deposition."[210] On one hand, a defendant arraigned on a felony complaint is entitled to a prompt hearing under CPL section 180.10(2)[211] and that CPL section 180.60 describes the due process which must be afforded to a defendant at this preliminary hearing.[212] On the other hand, a defendant charged with driving while intoxicated is not given a preliminary hearing.[213] However, "a requested Supporting Deposition must contain 'allegations of fact . . . providing reasonable cause to believe that the defendant committed the offense.'"[214] The court concluded that:

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208. *Id.*

209. *Id.* at 606, 625 N.Y.S.2d at 430. N.Y. CRIM. PROC. LAW § 70.10(2) (McKinney 1992). Section 70.10(2) describes "reasonable cause" as follows:

> "Reasonable cause to believe that a person has committed an offense" exists when evidence or information which appears reliable discloses facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that such offense was committed and that such person committed it. Except as otherwise provided in this chapter, such apparently reliable evidence may include or consist of hearsay.

Id.

210. *Boulton*, 164 Misc. 2d at 606, 625 N.Y.S.2d at 430. *See* N.Y. CRIM. PROC. LAW § 1.20(5) (McKinney 1992); N.Y. CRIM. PROC. LAW § 100.20 (McKinney 1992).

211. N.Y. CRIM. PROC. LAW § 180.10(2) (McKinney 1992). The due process afforded to a defendant charged with a felony is more particularly described in N.Y. CRIM. PROC. LAW § 180.60.

212. *Boulton*, 164 Misc. 2d at 606, 625 N.Y.S.2d at 430.

213. *Id.* at 607, 625 N.Y.S.2d at 430.

214. *Id.* (quoting N.Y. CRIM. PROC. LAW § 100.25(2) (McKinney 1992)).

> It does not appear that the reasonable cause review that is called for under Vehicle and Traffic Law § 1193(2)(e)(7)(b) gives a defendant any more due process than he or she is not otherwise entitled to when a simplified traffic information and supporting deposition are filed with the court.[215]

Although the court conceded that treatment between felony and driving while intoxicated complaints differ, the court has the power to suspend a license whether or not section 1193(2)(e)(7)(a) of the Vehicle and Traffic Law was enacted, as long as it adhered to the above described two-prong analysis.[216] The court stated that "[t]he due process afforded to the defendant is not found in the process of taking the license, but in the process of its return."[217] At that time, the defendant may present evidence that "tend[s] to rebut" the court's decision.[218] The court reasoned that "the defendant is in a position to exercise his or her due process rights without constraint" because the prosecution is not involved during that phase.[219] Accordingly, the court held that section 1193(2)(e)(7)(a) does not violate the defendant's right to due process.[220]

The second constitutional claim the defense raised was that section 1193(2)(e)(7)(a) of the Vehicle and Traffic Law violated the Separation of Powers Doctrine.[221] The court focused on New York Vehicle and Traffic Law section 510, which provides: "Any magistrate, justice or judge, in a city, in a town, or in a village, any supreme court justice, any county judge, any judge of a district court . . . shall have power to revoke or suspend the license to drive a motor vehicle or motorcycle of any person . . . ."[222] Therefore, the court is empowered to

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215. *Boulton*, 164 Misc. 2d at 607, 625 N.Y.S.2d at 430.

216. *Id.*

217. *Id.*

218. *Id.* (quoting N.Y. VEH. & TRAF. LAW § 1193(2)(e)(7)(b) (McKinney Supp. 1995)).

219. *Id.*

220. *Id.*

221. *Id.* at 608, 625 N.Y.S.2d at 430.

222. N.Y. VEH. & TRAF. LAW § 510 (McKinney Supp. 1995).

"temporarily suspend" an individual's driver's license.[223]

With respect to this claim, the court indicated that "the responsibilities of the judiciary on occasion overlaps with the duties and responsibilities of the executive branch[;]" however, the subject statute does not place the court in such a dilemma.[224] In sum, the court held that section 1193(2)(e)(7)(a) of the Vehicle and Traffic Law does not violate the State and Federal Separation of Powers Doctrine.[225]

Lastly, the court evaluated the equal protection claim by utilizing the rational basis test.[226] The defense argued that courts treat defendants charged with driving while intoxicated per se, pursuant to Vehicle and Traffic Law section 1192(2), differently than defendants charged with driving while intoxicated or driving while impaired by drugs, pursuant to Vehicle and Traffic Law sections 1192(3) and 1192(4), respectively, and that the differing treatments violated the defendant's right to equal protection of the laws.[227] Although the court found that those respective charges were treated differently, no equal protection violation existed in either the New York State or Federal Constitutions.[228] Therefore, the court concluded that "[i]t is not impermissible to treat a person who pleads guilty differently from a person who pleads not guilty."[229]

223. *Boulton*, 164 Misc. 2d at 608, 625 N.Y.S.2d at 430-31.
224. *Id.* at 608, 625 N.Y.S.2d at 431.
225. *Id.*
226. *Id.*
227. *Id.*
228. *Id.*
229. *Id.*