To be argued by
VALERIE FIGUEREDO
(15 MINUTES REQUESTED)

New York Supreme Court

Appellate Division - First Department

Ind. No. 774/2019
Appellate Division Case No. 01097/2020

THE PEOPLE OF THE STATE OF NEW YORK,

Appellant,

- against -

PAUL J. MANAFORT, JR.,

Defendant-Respondent.

On Appeal from the Supreme Court of the State of New York, New York County

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REPLY BRIEF FOR APPELLANT

INTRODUCTION

Recognizing that New York's statutory double jeopardy prohibition would be too broad if it did not have any exceptions, the Legislature authorized successive prosecutions based on the same criminal transaction in certain circumstances. As applicable here, CPL § 40.20(2)(b) permits a successive prosecution where the offenses in the second prosecution contain different elements and the defining statutes were "designed to prevent very different kinds of harm or evil" than the offenses in the first prosecution. Because the state offenses of First-Degree Scheme to Defraud, First-Degree Falsifying Business Records, First-Degree Residential Mortgage Fraud, Attempted First-Degree Residential Mortgage Fraud, and Fourth-Degree Conspiracy contain different elements and were designed to prevent very different kinds of harm

than the federal offenses of Bank Fraud and Conspiracy to Commit Bank Fraud, the New York prosecution of defendant falls squarely under CPL § 40.20(2)(b).

Defendant contends that Justice Wiley was correct in concluding that the different-harms prong of CPL § 40.20(2)(b) was not met here, because the state and federal offenses were designed to prevent the same harms. In support of that claim, defendant relies primarily on two alternative arguments, both of which run afoul of the statutory text and pertinent case law. First, defendant relies on the factual allegations in both prosecutions to argue that the federal and state prosecutions were based on the same alleged fraudulent conduct against the same victims—financial institutions. Application of CPL § 40.20(2)(b), however, turns not on the particular criminal acts that the defendant is alleged to have committed in a specific prosecution or on the particular harms that the defendant is alleged to have caused, but rather on the broader harms that the pertinent statutes were designed to prevent. Second, when not focused on the particular facts underlying the two prosecutions, defendant overlooks the distinct harms that the federal and state offenses were designed to target and, like Justice Wiley, posits that all of those crimes help to protect the overall economy from fraud—a generalization that fits scores of Penal Law crimes. Such an expansive view of the harm or evil a statute was designed to address would render CPL § 40.20(2)(b) virtually meaningless. Accordingly, for the reasons set forth here and in the People's opening brief, this Court should reverse the Supreme Court's order and reinstate the indictment.

ARGUMENT

CPL § 40.20(2)(b) PERMITS THE PEOPLE'S PROSECUTION OF DEFENDANT.

A. The "harm or evil" referenced in CPL § 40.20(2)(b) is the harm a statutory offense was designed to prevent and not the harm alleged to have been caused by the particular criminal acts charged in an individual prosecution.

Based on the text of CPL § 40.20(2)(b) and the case law interpreting that exception, the People, in their opening brief, showed that the federal and state criminal statutes under which defendant was charged in the federal and state prosecutions were respectively designed to prevent very different kinds of harm. Drawing on Justice Wiley's decision, defendant makes several arguments in an effort to challenge the People's analysis of the harms the various statutes were designed to address. But each of defendant's arguments either ignores or distorts the plain language of CPL § 40.20(2)(b) and conflicts with the court decisions addressing that exception.

First, defendant claims that CPL § 40.20(2)(b) does not apply to the state prosecution against him because both the particular conduct for which he was charged in the federal and state prosecutions, and the particular results of that conduct, were the same (Def.'s Br. at 5, 21, 28-29, 33). More specifically, defendant argues that both prosecutions charged him with "defrauding financial institutions in connection with mortgage loans," and thus the federal and state charges address "the same alleged fraud, causing the same alleged harm, to the same alleged victims" (Def.'s Br. at 5, 33). But the particular result of the particular criminal conduct alleged in a prosecution is simply

not the harm to which the exception in CPL § 40.20(2)(b) is addressed. See Matter of Kaplan v. Ritter, 71 N.Y.2d 222, 229 (1987); People v. Bryant, 92 N.Y.2d 216, 229 (1998).

CPL § 40.20(2)(b), by its plain text, creates an exception to the State's double jeopardy bar for a successive prosecution when the charged offenses contain different elements than the offenses in the prior prosecution and when the "statutory provisions defining such offenses are designed to prevent very different kinds of harm or evil." See CPL § 40.20(2)(b). Consistent with that statutory text, the Court of Appeals in Matter of Kaplan v. Ritter, 71 N.Y.2d 222 (1987), explained that CPL § 40.20(2)(b) requires that the "harm or evil to be addressed by the separate prosecutions be analyzed *by reference to the statutory provisions defining such offenses rather than to the particular criminal acts charged*." Id. at 229 (emphasis added, internal quotation marks omitted).[1] Repeating that point, the Court stated that CPL § 40.20(2)(b) "looks not to the evil toward which the particular prior prosecution was directed, but rather to the *broader evil to which the penal statute in question was addressed*." Id. at 230 (emphasis added).

In People v. Bryant, 92 N.Y.2d 216 (1998), the Court reaffirmed that the different-harms prong of CPL § 40.20(2)(b) is satisfied when "the kinds of harm or evil *sought to be regulated under the Federal and State statutes* are very different." Id. at 229

[1] Notably, defendant in his brief makes no mention of the Kaplan Court's express admonition that the analysis of the harms addressed by the separate prosecutions does not turn on the "particular criminal acts charged."

(emphasis added, internal quotation marks omitted); accord Matter of Sharpton v. Turner, 170 A.D.2d 43, 48 (3d Dep't 1991) (in applying CPL § 40.20(2)(b), relied on "the harm the Legislature intended to prevent" when enacting the crime and not the harm alleged to have occurred in a particular prosecution). In other words, the harms that must be considered when determining whether CPL § 40.20(2)(b) permits a successive prosecution are the kinds of harm that the statutes defining the charged crimes were aimed at, and not the actual harms alleged to have occurred in the particular prosecutions.

When the Legislature has sought to base an exception to CPL § 40.20(1) on the factual allegations underlying the charges in successive prosecutions, it did so plainly. For instance, the exception in CPL § 40.20(2)(e) permits successive prosecutions based on the same transaction where the facts alleged in each of the prosecutions involved a "loss or other consequence to a different victim." CPL § 40.20(2)(e); see Matter of Kaplan, 71 N.Y.2d at 230 (explaining that CPL § 40.20(2)(e) applies when the successive prosecutions involve different "specific, individually identifiable victims"). Of course, that exception would not apply here, given that—as defendant argues—the offenses charged in the federal and New York prosecutions involved harm to the same alleged victims. The People have relied only on the exception in CPL § 40.20(2)(b), which does not turn on the particular harms that the defendant was alleged to have caused in the two prosecutions, but rather on the kinds of harm the statutory offenses were designed to prevent. Thus, defendant's references (Def.'s Br. at 5, 21, 28-29, 33) to the particular

circumstances underlying the two prosecutions provide no support whatsoever for Justice Wiley's decision and defendant's corresponding claim that this case falls outside the exception set forth in CPL § 40.20(2)(b).

To be sure, defendant sometimes professes to accept that the exception in CPL § 40.20(2)(b) does not turn on the actual harms caused by the charged acts underlying the two prosecutions, but rather on the harms or evils that the pertinent criminal statutes were designed to address (Def.'s Br. at 17-18). Even then, however, defendant overlooks those harms or evils and, like Justice Wiley, focuses instead on the overarching goal of protecting the economy from fraud and promoting economic stability (Def.'s Br. at 23, 27-28, 33-34, 39-40; A. 24-26, 28-29). Defendant argues that any two prosecutions for crimes that advance those expansive goals do not fall within the exception in CPL § 40.20(2)(b). That view finds no support in the decisions of the Court of Appeals or other appellate courts, and would essentially eviscerate the exception in CPL § 40.20(2)(b).

After all, promoting economic stability could be cited as the goal of nearly all "fraud" crimes, as well as other crimes—for example, Larceny—which could be said to protect the economy by safeguarding the financial well-being of all businesses and consumers. Likewise, under defendant's expansive view of the meaning of "harm" or "evil" under CPL § 40.20(2)(b), crimes such as Homicide, Sexual Assault, and Kidnapping could be considered to serve the same overarching societal goal: the protection of the health, safety, and welfare of individuals. In short, instead of taking

into account the "broader harm" that a statutory crime was designed to prevent, defendant insists on framing the statutory purpose in the very broadest terms possible, an approach that, if adopted, would largely nullify the exception in CPL § 40.20(2)(b).[2] The Legislature plainly did not intend for such a result: it enacted the exceptions to the statutory double jeopardy bar in CPL § 40.20(1) because it believed that the prohibition against successive prosecutions was otherwise too far-reaching. See People v. Rivera, 60 N.Y.2d 110, 114 (1983).

Defendant, again without basis, takes aim at the People's assertion that CPL § 40.20(2)(b) applies where successive prosecutions charge crimes that were designed to protect different classes of victims.[3] In that regard, defendant criticizes the

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[2] In Matter of Kaplan, when the Court of Appeals referred to "the broader harm" in discussing the proper analysis under CPL § 40.20(2)(b), it did so in contrast to the harm targeted in a particular prosecution; the Court never suggested that the broadest possible view of a harm should determine whether CPL § 40.20(2)(b) applied. See 71 N.Y.2d at 229-230.

[3] Defendant wrongly suggests that the People have fashioned their own preferred test for determining when CPL § 40.20(2)(b) applies. In particular, defendant faults the People for arguing that two statutes prevent very different kinds of harm within the meaning of CPL § 40.20(2)(b) when the statutes "serve different objectives" or contain "key differences" (Def.'s Br. at 18). But, indeed, case law demonstrates that courts have looked to whether statutes differ in purpose or objective or protect different classes of victims in determining whether those statutes were designed to prevent very different kinds of harm. Bryant, 92 N.Y.2d at 229 (examining "purposes" of federal and state offenses to conclude that offenses were designed to prevent different harms); People v. Hilts, 224 A.D.2d 824, 825 (3d Dep't 1996) (assessing different legislative "objective[s]" of two drug laws to determine that statutes prevented different harms); Matter of Kaplan, 71 N.Y.2d at 229 (noting that "evil or harm" a statute was designed to prevent corresponds to a "general category of 'victims'").

People for advocating that "statutes protecting different 'classes' of victims necessarily satisfy the different-evil exception" (Def.'s Br. at 21). But, of course, that is precisely what the controlling case law establishes.

As the Court of Appeals explained in Matter of Kaplan, "[v]irtually any criminal act may be described *either* in terms of the evil or harm that the relevant penal legislation was designed to prevent *or* in terms of a general category of 'victims' corresponding roughly to that evil or harm." 71 N.Y.2d at 229 (emphasis in original). The clear import of the Court's discussion is that the different-harms prong of CPL § 40.20(2)(b) is satisfied where the statutory offenses in successive prosecutions are designed to prevent harm to different classes of victims. See also Bryant, 92 N.Y.2d at 229 (concluding that state and federal offenses were designed to prevent different harms, in part, because federal bank robbery statute protected financial institutions and state homicide statute prevented the killing of police officers).

Moreover, defendant's contrary claim notwithstanding (Def.'s Br. at 21), CPL § 40.20(2)(b) applies where two statutes were designed to protect two very different classes of victims, even if, on the facts of a particular case, the actual victims are the same. The Third Department's decision in Matter of Sharpton v. Turner, 170 A.D.2d 43 (3d Dep't 1991), makes that point.

In Matter of Sharpton, the court applied CPL § 40.20(2)(b) to permit a successive prosecution that charged the defendant with Offering a False Instrument for Filing, failure to file a state income tax return, and other tax-related charges, after a prior

prosecution that charged the defendant with Scheme to Defraud and other fraud-related charges. Id. at 45. Based on the facts underlying the first prosecution, the State and individual donors were the purported victims of the Scheme to Defraud charge. Id. And based on the factual allegations in the subsequent prosecution, the State was the only alleged victim of the Offering a False Instrument for Filing and the failure to file an income tax return charges. Id.

Despite the State purportedly being a victim of defendant's alleged acts in both prosecutions, the Appellate Division, Third Department, found that the successive prosecution was permitted under CPL § 40.20(2)(b). Id. at 48. The court reasoned that, although the Scheme to Defraud statute was sufficiently broad to make it "arguably possible to bring the State within the reach of the crimes charged," the statute was enacted as "a consumer protection measure whose purpose is to prevent multiple victims from being bilked of small amounts of money by way of fraudulent scams or schemes." Id. The court concluded that the statutory purpose of the Scheme to Defraud statute was "entirely different" from the statutory purpose of both the Offering a False Instrument for Filing statute, which was "enacted to prevent persons from defrauding the State out of substantial sums of money," and the tax-related charges, which were intended to "prevent tax evasion." Id. at 48-49.

Contrary to defendant's argument (Def.'s Br. at 21-22), the conclusions of the Courts in Matter of Kaplan and Helmsley that CPL § 40.20(2)(b) did not apply in those cases does not undermine the correctness of the People's view that statutes protecting

different classes of victims satisfy the different-evil exception. In Matter of Kaplan, the crimes charged in the federal prosecution were designed to protect "citizens and taxpayers," and the crimes charged in the state prosecution were designed to protect "the investing public at large." 71 N.Y.2d at 228. It is readily apparent from the mere description of those two classes of victims, that they nearly overlap one another completely. After all, investors pay taxes and thus are essentially subsumed in the class of taxpayers, thus rendering CPL § 40.20(2)(b) inapplicable in that case.

In People v. Helmsley, 170 A.D.2d 209 (1st Dep't 1991), the successive prosecutions also involved crimes designed to protect overlapping classes of victims. In Helmsley, a prior federal prosecution for tax evasion and mail fraud was held to bar a subsequent state prosecution for tax evasion and falsifying business records. Id. at 209, 212. This Court concluded that there was "nothing different in kind between the harms or evils sought to be prevented in the Federal and State statutes," reasoning that "cheating the Federal versus the State government of tax revenue" did not raise "different 'evils.'" Id. at 212. And, certainly, regardless of the jurisdiction, tax laws are designed to remedy the same kind of harm, the loss of revenue required for the provision of government services, and protect the same kind of victims, government entities.

Accordingly, under CPL § 40.20(2)(b), the particular harm alleged to have been caused by a defendant in any specific prosecution is not the harm to which the exception is addressed. Instead, the exception in CPL § 40.20(2)(b) applies where the

broader harms that the pertinent statutes were designed to prevent are very different in kind. When the correct principles relating to CPL § 40.20(2)(b) are applied, the state and federal prosecutions plainly fall within the exception.

B. All of the state offenses were designed to prevent very different kinds of harm than the federal offenses of Bank Fraud and Bank Fraud Conspiracy.

As the People showed in their opening brief, a review of the pertinent statutory provisions and legislative history establish that all of the state offenses charged against defendant were designed to prevent kinds of harm that are very different from the kinds of harm sought to be prevented by the federal offenses.

First-Degree Scheme to Defraud, Penal Law § 190.65

New York's Scheme to Defraud offense and the federal crimes were designed to protect very different classes of victims. The state Scheme to Defraud statute, as is evident from the legislative history, was enacted to protect consumers from fraudulent schemes used to cheat them out of small amounts of money (see People's Br. at 30-32). See also Mem. of Assemblyman Stanley Fink, 1976 N.Y.S. Legislative Annual, at 35-36 (explaining that Legislature was concerned with consumers falling prey to "get rich quick schemes" where "goods and services [were] promised and paid for but without the expected performance"); Ltr. of R. Hayes to J. Gribetz (June 11, 1976), reprinted in Bill Jacket for Ch. 384. By contrast, the federal offenses of Bank Fraud and Bank Fraud Conspiracy were designed to prevent financial institutions from financial loss caused by fraudulent schemes (see People's Br. at 22-28). Indeed, as defendant himself

acknowledges (Def.'s Br. at 27), the federal crime of Bank Fraud is limited by its "elements" to the commission of "frauds on financial institutions." And consistent with that text, the legislative history of the Bank Fraud statute demonstrates that the statute was enacted to protect financial institutions (see People's Br. at 23-27). In that regard, Congress enacted the Bank Fraud statute in response to a need for an effective mechanism by which fraudulent crimes committed against banks and other financial institutions could be prosecuted. See S. Rep. No. 98-225, at 377-79 (1983).

Nevertheless, defendant faults as too "narrow" the People's "reading" of the federal Bank Fraud statute as a law "protecting financial institutions" from financial loss (Def.'s Br. at 12, 24). And, in that regard, he notes that Congress amended the federal Bank Fraud statute in the wake of the 2008 financial crisis to expand the definition of "financial institutions" to include mortgage lending businesses, regardless of whether the mortgage lending businesses were federally chartered or insured. See 18 U.S.C. §§ 20(10), 27. But plainly, the crime of federal Bank Fraud, whether examined before or after the amendment, is still undeniably designed to protect "financial institutions" from financial loss. The amendment simply enlarged the definition of "financial institutions."

Defendant further argues that because the federal Bank Fraud statute and the state Scheme to Defraud statute were modeled after the federal Wire Fraud and Mail Fraud statutes, the federal and state offenses were necessarily designed to prevent the same harm (Def.'s Br. at 35-36). But regardless of whether the Bank Fraud and Scheme

to Defraud statutes were modeled to some degree on the same statute, those two offenses were enacted to protect different classes of victims. Thus, those two statutes satisfy the exception in CPL § 40.20(2)(b).[4]

First-Degree Falsifying Business Records, Penal Law § 175.10

The state offense of Falsifying Business Records, as reflected in the statutory text, was designed to protect the integrity of written records, see Penal Law §§ 175.00, 175.10, thereby benefiting any person or entity that relies on the written records of business and government enterprises (see People's Br. at 38-41). Thus, the purpose of the state crime is unlike the purpose of the federal Bank Fraud statute, which was designed to protect financial institutions from financial loss.

Nevertheless, defendant claims that Justice Wiley was correct in concluding that the state crime of Falsifying Business Records and the federal offenses of Bank Fraud and Bank Fraud Conspiracy prevent the same harm because the state crime is a means by which to commit the federal crimes (Def.'s Br. at 41-42). But, as the People observed

[4] In his decision, Justice Wiley cites a lower court decision, People v. Alba, 43 Misc.3d 878 (Sup. Ct. Bx. Co. 2014), as support for his view that Scheme to Defraud and Bank Fraud were designed to prevent the same kinds of harm (A. 29; see Def.'s Br. at 36). But, the crimes at issue in Alba were Scheme to Defraud and Wire Fraud—not Scheme to Defraud and Bank Fraud. Wire Fraud, unlike both Bank Fraud and Scheme to Defraud, was not designed to protect a particular class of victims. Thus, the Alba court's determination that CPL § 40.20.(2)(b) did not allow for successive prosecutions for Scheme to Defraud and Wire Fraud provides no support for Justice Wiley's ruling that CPL § 40.20(2)(b) does not permit successive prosecutions for Scheme to Defraud and Bank Fraud.

in their opening brief (People's Br. at 41-42), People v. Bryant, 92 N.Y.2d 216 (1998), demonstrates that even a crime that is a means by which to commit another crime may nonetheless have been designed to prevent a very different kind of harm.

As is relevant here, Bryant involved a federal prosecution for the federal offenses of bank robbery, assaulting and placing in jeopardy the lives of persons by the use of dangerous weapons during the course of a bank robbery, and using and possessing certain firearms during the commission of a crime of violence. Id. at 225. The subsequent state prosecution in Bryant was for the crimes of attempted murder of a police officer and the knowing possession of a defaced firearm. Id. Although the federal offenses required as an element the use of a firearm, the Court of Appeals nonetheless concluded that the state weapons offense and the federal robbery and assault offenses were designed to prevent very different kinds of harm.[5]

First-Degree Residential Mortgage Fraud, Penal Law § 187.25

As is evident from the text of the Residential Mortgage Fraud statute, the principal protected class under the state statute is homeowners (see People's Br. at 44-47). Conversely, the statutory text of the Bank Fraud statute demonstrates that the class of victims protected by the federal statute are financial institutions (see People's Br. at

[5] In his description of the federal prosecution in Bryant, defendant states only that it involved a "robbery," omitting that two of the federal offenses in that case required as an element that the defendant use or possess a firearm (see Def.'s Br. at 42).

22-23). The state and federal offenses thus protect starkly different classes of victims, satisfying the exception in CPL § 40.20(2)(b).

Defendant acknowledges, as he must, that the crime of Residential Mortgage Fraud contains provisions that "are specific to the protection of homeowners" (Def.'s Br. at 31). Nevertheless, defendant argues that, according to legislative history, a key legislative concern for enacting the state crime was to simplify prosecutions for fraud committed in relation to residential-mortgage-loan applications (Def.'s Br. at 31). But, given the statutory text, any intention of the Legislature to simplify such prosecutions was clearly for the benefit of homeowners.

Fourth-Degree Conspiracy, Penal Law § 105.10

Finally, defendant contends that Justice Wiley correctly concluded that the state offense of Fourth-Degree Conspiracy and the federal offense of Conspiracy to Commit Bank Fraud are both designed to prevent the harm caused by illicit agreements (Def.'s Br. at 43-45). But, a comparison of the pertinent statutes belies that claim. Like most of the New York conspiracy laws, Fourth-Degree Conspiracy is not tied to any particular substantive offense. It merely requires an agreement to commit any class-B or class-C felony, whereas federal Bank Fraud Conspiracy requires an agreement specifically to commit Bank Fraud.[6] As this Court concluded in Matter of Robinson v. Snyder, 259

[6] Defendant claims that that the jury instruction regarding Bank Fraud Conspiracy from his federal trial supports his argument that the kind of harm that the Bank Fraud Conspiracy crime was designed to address was simply an "illicit agreement" (Continued…)

A.D.2d 280, 281-82 (1st Dep't 1999), the harm sought to be prevented by the State's conspiracy laws "is the deterrence of concerted activity in furtherance of a criminal purpose" (see also People's Br. at 50-53). Conversely, the harm sought to be prevented by a conspiracy statute requiring an agreement to commit a specific substantive crime is the same harm that the substantive offense was designed to prevent. See Matter of Abraham v. Justices of N.Y. Supreme Court, 37 N.Y.2d 560, 567 (1975).[7] Thus, the federal and state conspiracy crimes were designed to prevent very different harms.[8]

(Def.'s Br. at 44 n.11). But, that argument overlooks that the very first instruction given to the jury regarding Bank Fraud Conspiracy expressly stated that one of the "essential elements" of the crime of "Bank Fraud Conspiracy" is an agreement "to commit bank fraud." See Defendant's Appendix at 4 ("Instruction No. 62").

[7] Justice Wiley relied on Matter of Wiley v. Altman, 52 N.Y.2d 410 (1981), in concluding that the federal offense of Bank Fraud Conspiracy was aimed at addressing the harm caused by concerted illicit activities. However, as the People already explained (People's Br. at 53 n.15), Matter of Wiley predated Matter of Kaplan, where the Court of Appeals explained that an assessment of the harm a statute was designed to prevent looks at the statutory purpose, and not the conduct charged in a particular prosecution. Although Matter of Abraham also predated Matter of Kaplan (Def.'s Br. at 47 n.12), Matter of Abraham is consistent with Matter of Kaplan. In Matter of Abraham, the conspiracy statute at issue required an agreement to commit one of a specific kind of substantive offense, and thus the court correctly assessed the harm the conspiracy statute was designed to prevent by reference to the harm the substantive offense was designed to address.

[8] That the federal Bank Fraud Conspiracy statute was intended to prevent the same harm as the substantive offense of Bank Fraud is further demonstrated by the penalty imposed for those crimes. Congress imposed the very same punishment for Bank Fraud Conspiracy as Bank Fraud. See 18 U.S.C. § 1349 (conspiracy to commit any offense under this chapter shall be subject to the same penalty as that prescribed for the offense that is the object of the … conspiracy); see also 18 U.S.C. § 1344 (fixing sentence for Bank Fraud at "not more than 30 years"). By contrast, the state crime of Fourth-Degree Conspiracy is classified as a class-E felony. See Penal Law § 105.10. That

(Continued…)

Lastly, defendant also contends, as Justice Wiley concluded, that even if the harm the federal and state conspiracy statutes were designed to prevent were both assessed by reference to the specific substantive offense that was the object of the conspiracy, the federal and state conspiracy statutes would still target the same harm—namely, "preventing financial fraud" (A. 27; Def.'s Br. at 48). That argument also fails. The object crime of the conspiracy charge in the New York prosecution was First-Degree Residential Mortgage Fraud, a class-B felony. In the federal prosecution, the object crime of the conspiracy was federal Bank Fraud. And as already shown (People's Br. at 44-48), the state offense of Residential Mortgage Fraud, unlike the federal offense of Bank Fraud, was designed to protect homeowners, not banks. Thus, even by reference to the particular substantive offense that is the target of the conspiracies alleged in the successive prosecutions, the state crime of Fourth-Degree Conspiracy is designed to prevent a very different kind of harm than the federal offense of Bank Fraud Conspiracy.[9]

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classification makes the conspiracy crime subject to a much lesser sentence than the object crime. See Penal Law §§ 70.00(b) (maximum prison term for class-B felony not to exceed twenty-five years); 70.00(c) (for class-C felony, not to exceed fifteen years); 70.00(e) (for class-E felony, not to exceed four years). The difference in punishment between the conspiracy offense and the substantive offense is further evidence that the state crime of conspiracy and the object crime were directed at very different harms.

[9] People v. De Oca, 282 A.D.2d 401 (1st Dep't 2001), is not to the contrary (Def.'s Br. at 47). Although defendant characterizes De Oca as a case that involved a "prior federal money-laundering-conspiracy prosecution" and a subsequent "state narcotics-conspiracy prosecution," the subsequent prosecution in De Oca was under

(Continued…)

CONCLUSION

The order of the Supreme Court should be reversed and the indictment reinstated.

Respectfully submitted,

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the State's Second-Degree Conspiracy statute, which, like the Fourth-Degree Conspiracy statute, does not tie the conspiracy to any particular substantive offense. See Penal Law § 105.15 (requiring agreement to commit any class-A felony). In contrast to the state conspiracy statute, the federal conspiracy statute at issue in the prior prosecution in De Oca, like the federal Bank Fraud Conspiracy statute, required an agreement to commit a specific substantive offense: money laundering. See 18 U.S.C. § 1956(h).

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