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Passenger challenges rideshare immunity

1st District accepts question over Transportation Network Providers Act

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The state law regulating rideshare services is coming under constitutional scrutiny in the wake of an alleged sexual assault.

Lawyers representing a Jane Doe victim who was allegedly zip-tied and assaulted by a Lyft driver in 2017 argue the Illinois Transportation Network Providers Act should not allow the company to avoid liability for the attack.

Doe was allegedly assaulted by a Lyft driver named Angelo McCoy in July 2017 after he picked her up in River North and took her to a dark alley while she slept in the backseat. She escaped his vehicle at a traffic light after repeated assaults at knife point.

The Cook County lawsuit alleges Lyft was negligent in its hiring of McCoy, and that Lyft fraudulently misrepresented itself as a safe transportation option. It also included counts of assault and false imprisonment against Lyft, arguing McCoy was within the scope of his employment for the rideshare service when the alleged attack happened.

Lyft argued it shouldn't be held liable for the driver's alleged actions because they were taken outside the scope of his employment. Doe then responded arguing that common carriers — or companies similar to them — owe a duty of care to passengers.

Lyft cited language in the Transportation Network Providers Act that states rideshare companies are not common carriers, and it argued the law protects businesses like Lyft from vicarious liability claims.

A ride share car displays Lyft and Uber stickers on its front windshield in this 2016 file photo. The 1st District Appellate Court this month accepted an appeal from a Lyft passenger that was allegedly attacked by her driver. She seeks a ruling that rideshare services should be subject to vicarious liability for drivers' actions in the same way common carriers owe a duty to passengers. AP Photo/Richard Vogel

Circuit Judge Patricia O'Brien Sheahan allowed the assault and false imprisonment counts to survive a motion to dismiss, and she tossed the negligence and fraud elements.

But Sheahan also certified specific questions for interlocutory appeal: whether the law actually does aim to preclude rideshare services from facing strict liability for the actions of hired drivers, and whether that violates a ban on "special" laws in the state constitution.

The 1st District Appellate Court granted the interlocutory appeal earlier this month.

Doe told the 1st District that even if the act says rideshare companies are not technically "common carriers" — entities like airlines or railroads deemed especially responsible for safe transport — common law calls a high duty of care toward customers.

"Simply put, Lyft should be treated like all other public transportation companies that sell rides, just like Yellow Cab and Flash Cab, and be subject to the common carrier doctrine," said Timothy S. Tomasik of Tomasik Kotin Kasserman, LLC, who represents Doe in the case.

"In those circumstances, if this happened in a Yellow Cab or Checker cab, or limousine, the corporate defendants would be held responsible for the criminal action."

In her brief filed last month, the plaintiff cited two appellate court decisions holding both a school district and a private bus contractor vicariously liable for assaults

that took place in their vehicles.

Those decisions, a 2008 4th District ruling in *Green v. Carlinville Community Unit School District* and a 2016 2nd District ruling in *Doe v. Sanchez*, held that while the entities weren't technically common carriers, they performed similar functions and exercised similar control over their passengers and could be held similarly liable.

The Restatement (Second) of Torts also stands for this proposition, the plaintiff claims, because it acknowledges that special relationships besides the four typically enumerated in such an analysis — common carrier and passenger; innkeeper and guest; landowner and invitee; and guardian and ward — may exist "in any relation of dependence."

"This relationship of control and dependence is one that Lyft does everything it can to foster for its business, regularly targeting its marketing at vulnerable demographics, especially young women, and then does everything it can to reject when presented with the harmful consequences," the brief states. "Lyft should not be permitted to claim the benefits of that relationship while disclaiming its costs and thereby forcing its victims to shoulder the terrible burden created by its reckless operations."

Anthony J. Carballo of Freeborn & Peters LLP is one of the attorneys representing Lyft in the case. He could not be reached for comment Wednesday.

But in the company's own brief, which sought to dissuade the court from taking the interlocutory appeal, Lyft argued there's a clear distinction between this case and the appellate cases cited by Doe.

"Neither of those cases concerned a statutory exclusion from common carrier status," Lyft argued. "The Green decision makes clear this is a critical distinction, noting that 'Defendant is free … to lobby the General Assembly … to specifically make school districts immune from future claims of this type. The legislature may determine, for sound policy reasons, that school districts should not be held to this standard of care."

The second piece of Doe's argument is that Section 25(e) of the transportation network act, which states that rideshare companies are not common carriers, violates Article IV, Section 13 of the Illinois Constitution. That provision prohibits the General Assembly from passing a "special or local law" where a general law could be applied.

The circuit court in this case found the rideshare law did make a distinction in favor of a select group, the rideshare companies, but the plaintiffs argue it didn't finish the analysis by determining whether such a distinction was rational or arbitrary.

Doe argued Lyft is not distinct enough from taxi services to warrant such special treatment. And although it might characterize itself as a

Timothy S. Tomasik

technology company that matches independent drivers with customers, such distinctions are illusory because at the end of the day, it markets itself as a cab alternative.

"The point is that Lyft sells rides. It is as much in the business of selling transportation as taxicab, railroad and bus companies," the brief states. "At bottom, rideshare companies are engaged in a for-profit enterprise based on the provision of transportation services, and there are no real and substantial differences between them and their more traditional competitors sufficient to justify the unique preference shown in Section 25(e) of the TNPA."

Citing Sheahan's earlier ruling in the case, Lyft counters that the legislature saw a clear reason for treating rideshare companies differently — promoting their growth.

"That is why every United States Court of Appeals to consider the issue, including the Seventh Circuit, has found meaningful distinctions between [transportation network companies] and taxicabs that provide a rational basis for divergent regulatory schemes in the equal protection context," the company's brief states.

The plaintiff's lawyers also make the case that the law violated the constitution's prescription for legislative approval. Bills in the General Assembly are technically supposed to be read on three different days in each chamber. But legislators often use "shell bills" to fulfill this requirement — reading measures with little or no substance into the record multiple times, then wedging in provisions toward the end of the process.

Doe concedes the courts usually take a hands-off approach, citing the "enrolled-bill doctrine," which states that proposals are deemed to have met requirements for passage if they are signed by the Senate president and Speaker of the House.

"However, the Supreme Court has also expressly reserved the right to revisit that question if, as demonstrated here, the legislature continues to abuse the legislative process and ignore this constitutional requirement."

The criminal case is still pending, Tomasik said.

The parties will likely file additional briefs in the case, and could argue it before the appellate court later this year or early next year.

The case in Cook County Circuit Court is *Jane Doe v. Lyft Inc., et al.*, 17 L 11355. The appellate case is Jane Doe v. Lyft Inc., et al., No. 1-19-1328.