State of New York
Court of Appeals

To be argued Wednesday, November 20, 2019

No. 102 People v David Mairena
No. 103 People v Mauricio Altamirano

These appeals, in which the defendants claim that errors by the trial court in instructing the jury violated their right to an effective summation, raise the question of whether such claims are subject to harmless error analysis.

David Mairena was accused of killing Miguel Jimenez with a box cutter during a fight outside a Brooklyn restaurant in 2013. Jimenez had been wielding a machete early in the fight, but witnesses said he dropped it before the fatal wound was inflicted. Prior to summations, Supreme Court said it would grant a defense request that it instruct the jurors they had to find the fatal injury was caused by the box cutter, and not broken glass, in order to convict Mairena of manslaughter. Defense counsel then argued in summation that Jimenez was cut when he fell on a broken bottle and the prosecutor failed to prove he was cut with the box cutter. Counsel also argued that Mairena acted in self defense. After summations, the court refused to deliver the promised charge to the jury. Mairena was convicted of first-degree manslaughter and sentenced to five years in prison.

The Appellate Division, Second Department affirmed. It held the trial court erred in refusing to provide the promised jury charge, but found the error harmless because the evidence of guilt was "overwhelming" and the error did not undermine Mairena's justification defense.

In 2011, Mauricio Altamirano agreed to keep a package in his Brooklyn apartment for an acquaintance he knew only as "Columbia." The package remained there for two or three weeks. When Altamirano learned the package contained a revolver, when is not clear, he told Columbia to take it away. Instead, Columbia came to his apartment, wrapped the gun in a blanket, put it in a bag, and placed it in a trash can, promising to return for it. He did not return. Shortly after Columbia was arrested on an unrelated charge, two police officers spoke with Altamirano at work and asked if he knew about the gun. He said yes, and immediately offered to take them to it. They drove to his apartment, he directed them to the trash can, and they arrested him for weapon possession. Prior to summations, Criminal Court denied defense counsel's request that it charge the jury on the defense of temporary and innocent possession of a weapon and it prohibited counsel from referring to the defense in his summation. After summations, the court reversed itself without prior notice to the parties and provided the requested jury instruction on temporary and innocent possession. The court denied defense counsel's request to reopen his summation to argue the innocent possession defense. Altamirano was convicted of fourth-degree weapon possession and sentenced to three years of probation.

The Appellate Term for the 2nd, 11th and 13th Judicial District affirmed. It held the court erred by instructing the jury on innocent possession without notice and without allowing defense counsel to reopen his summation, thus depriving Altamirano of his right to an effective summation; but it found the error harmless because he was not entitled to the instruction.

The prosecution cites appellate cases that apply harmless error analysis to jury instruction errors that implicate the right to an effective summation, and the defendants cite appellate cases suggesting that such errors cannot be found harmless and should be subject to a per se reversal rule.

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To be argued Wednesday, November 20, 2019

No. 104 People v Sixtus Udeke

A police officer arrested Sixtus Udeke, a Nigerian citizen, and Brittany Wise, the mother of his three children, for fare evasion in February 2014 when he saw them "doubling up" to pass through the turnstile together at the Union Square subway station in Manhattan. When the officer found that Civil Court had entered a temporary order of protection against Udeke nine days earlier, requiring him to stay away from and have no contact with Wise, Udeke was charged with an A misdemeanor count of second-degree criminal contempt for violating the order.

Udeke pled guilty in Criminal Court to a reduced charge of second-degree attempted criminal contempt, a B misdemeanor, and was given a conditional discharge. Before accepting the plea, the court told him that he would be waiving his right to a trial by jury, and Udeke asked, "By jury?" When defense counsel reminded the court that the charge would be reduced to a B misdemeanor, a petty offense that does not always require a jury trial under the Sixth Amendment, the court told Udeke that he was waiving his right to a "trial by a jury or a judge, depending on how the People proceed." Udeke said he understood. The court also asked if he understood that "this conviction could have an impact on your ability to remain in this country? You might be deported. You might not be allowed re-entry. You might be denied citizenship, or other things having to do with your immigration status." Udeke said yes.

The Appellate Term, First Department affirmed, rejecting Udeke's claim that his plea was not knowing and voluntary because the lower court had told him incorrectly that his right to a jury trial would depend on how the prosecution chose to proceed. The Appellate Division said his "contention that he should have been informed that he was entitled to a jury trial..., because as a noncitizen he would allegedly be deportable if convicted, is unavailing.... In any event, even assuming that defendant was entitled to a jury trial, the court's omission of the word 'jury' in discussing a defendant's right to a trial does not, by itself, vitiate the validity of a guilty plea...."

Six months after the Appellate Term's ruling, the Court of Appeals decided People v Suazo (32 NY3d 491), which held that "a noncitizen defendant who demonstrates that a charged crime carries the potential penalty of deportation – i.e removal from the country – is entitled to a jury trial under the Sixth Amendment."

Udeke argues his waiver of his right to a jury trial, and therefore his guilty plea, were invalid because Criminal Court misinformed him that his right to a jury would depend "on how the People proceed." He says that, as "a lawful permanent resident who faced a deportable offense," he "was entitled to a jury trial" under Suazo "however the prosecution decided to proceed." He says he "could not knowingly waive a right the court told him he might not have. Mr. Udeke did not, therefore, knowingly waive his right to a jury trial, and his guilty plea was invalid."

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State of New York
Court of Appeals

To be argued Wednesday, November 20, 2019

No. 105 Centi v McGillin

Mark Centi brought this action for breach of an oral agreement against Michael McGillin, a longtime friend and participant in Centi's bookmaking operation in Amsterdam, New York. Centi claimed that, in 2003, he loaned McGillin $170,000 in cash to be repaid with 3.95% interest over the next 11 years. Centi claimed McGillin made payments through 2009, then refused to make any further payments. McGillin denied borrowing money from Centi and, instead, testified that Centi asked him to hold $210,000 in cash for him as a "favor" in 2005, after both men were convicted of promoting gambling (Centi was fined $100,000 and McGillin was fined $50,000). McGillin said he paid Centi $400 per week for spending money until 2007, when he said the men had a falling out over the purchase of a liquor store and he returned all of the remaining cash to Centi. Centi testified that all of the cash he used for the loan to McGillin was obtained through his illegal bookmaking business.

Supreme Court found the two men "clearly" entered into the loan agreement and awarded $131,484.93 to Centi, plus prejudgment interest. It ruled that, whatever the source of the money, the terms of the loan were not illegal and the agreement was enforceable. The court said, "[I]t's a very strong argument that Mr. Centi has not resorted to self help, has not sought to enforce this loan by illegal means, that he's been forthright testifying.... As a general rule forfeitures by operation of law are disfavored, particularly where a defaulting party seeks to raise illegality as a sword for personal gain rather than a shield for public good."

The Appellate Division, Third Department affirmed on a 3-2 vote. It agreed unanimously that Centi loaned $170,000 to McGillin and was only partially repaid, but split on the question of whether the loan agreement could be enforced, since the loan funds were derived from illegal gambling. The majority found that McGillin "waived his right to challenge the loan on the basis of illegality because it was not raised as an affirmative defense (see CPLR 3018[b]...). Were we to consider the issue, we would find that, because neither the agreement nor the performance of the agreement was illegal, the judgment was enforceable...."

The dissenters argued that, "even though the subject contract may not have been intrinsically illegal, the fact that the money [Centi] loaned to [McGillin] was garnered directly from the fruits of an illegal bookmaking operation, the loan constitutes money laundering, and public policy and the fundamental concepts of morality and fair dealing should preclude [Centi] from accessing the court in order that he may obtain additional profit from the proceeds of his criminal activities...."

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