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COURT OF APPEALS

STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

NO. 5

AMBROSIO (JASON J.),

Appellant.

20 Eagle Street
Albany, New York
January 6, 2026

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

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Official court Transcriber

1 CHIEF JUDGE WILSON: Last case on today's
2 calendar is People v. Ambrosio.

3 MR. HUG: Good afternoon, Your Honors.

4 Matthew Hug for Mr. Ambrosio. Could I reserve
5 two minutes for rebuttal?

6 CHIEF JUDGE WILSON: Yes.

7 MR. HUG: This case is intertwined with the
8 predecessor.

9 I take a different tact. I think that Cruz
10 created the problem by ignoring 1192(4). So if - - - if
11 the way that this court reasoned its way out of a finding
12 that intoxication and impairment were unconstitutionally
13 vague was by pointing to the penalty that intoxication is a
14 misdemeanor and impairment is a violation, then, you would
15 have to conclude that this court, in an - - - in upholding
16 the statutory regime, was essentially creating an asymmetry
17 between impairment by drugs and impairment by alcohol. And
18 merely because the legislature hasn't deigned to change it
19 does not affect the asymmetry that still exists that Caden
20 N. pointed out, and that Judge Lynch pointed out in his
21 dissenting opinion in this case.

22 JUDGE GARCIA: Is that really an argument that
23 someone should make that that term impairment with respect
24 to drugs is unconstitutionally vague? And I don't see that
25 in any of these cases.

1 MR. HUG: Well, what - - - what the - - - the
2 issue in my case is whether or not the attorney at trial
3 was ineffective for not asking the trial judge to deliver a
4 charge based upon new and groundbreaking appellate
5 precedent that was directly on point, and in the district -
6 - - in the department where the trial was being held.

7 JUDGE TROUTMAN: Can you be ineffective if it's
8 not clearly established that that charge was, in fact,
9 required?

10 MR. HUG: Well, clearly established, you have a
11 case - - -

12 JUDGE TROUTMAN: In other words, there is still
13 argument. It was still evolving. Is - - - is - - - is it
14 ineffective if you're not sure you're going to even get it,
15 as opposed to the case, fast forward to how did it come up
16 here and we had affirmed that Lynch's view was the view?

17 MR. HUG: Well, if - - - in the latter fact
18 pattern, it would be much more obvious of - - - of
19 ineffectiveness. But in - - - in the fact pattern that we
20 have here, it is no less so. Because the - - - even - - -

21 JUDGE TROUTMAN: So aren't you raising the bar to
22 you have to be a perfect attorney?

23 MR. HUG: I don't know. A - - - a perfect
24 attorney, I think in dealing with DWI offenses, these are
25 technical types of cases, as seen in the amicus brief that

1 was submitted under the predecessor case.

2 It should have been clear to the attorney
3 representing Mr. Ambrosio that the evidence here of
4 intoxication, if it was an intoxication level, they're not
5 getting it over that bar. They're barely getting over
6 impairment, as far as I can tell, based upon the testimony
7 of the officer.

8 JUDGE RIVERA: But isn't the real question
9 whether or not Caden and - - - was binding at the time?

10 MR. HUG: Well, that's the - - - that's the - - -
11 that's what I was getting to.

12 JUDGE RIVERA: And if it was, whether or not
13 that, in and of itself, would render counsel ineffective
14 for failing to request a higher standards application?

15 MR. HUG: Yes. I - - - I recognize that Caden is
16 - - - the - - - the way that Caden was written is unclear
17 to an extent, insofar as it attempted to limit its decision
18 just to vehicular manslaughter. But it didn't provide any
19 rational basis for doing so.

20 CHIEF JUDGE WILSON: And what - - - what do you
21 make of Justice Lynch's last paragraph, where he basically
22 says, well, this doesn't actually make out a case of
23 ineffective assistance, but maybe we should reach this
24 under our interest of justice power?

25 MR. HUG: I - - - I mean, I was kind of baffled

1 because he says in that, I believe in that paragraph, that
2 it was unreasonable performance by the attorney. So are we
3 creating more lingo that's impossible - - -

4 JUDGE HALLIGAN: But he also - - - he also says
5 it's difficult to characterize Caden N. as so clear cut
6 that the failure to request the charge is ineffective.

7 MR. HUG: Yes, he does say that. I - - - I - - -
8 I can't envision that it isn't so clear cut when you're
9 looking at the - - - in trial counsel's shoes, he's got a
10 very thin case against his client. And there is this
11 decision that can only be read, if it's going to be read
12 reasonably, is that it attaches to 1192(4) which is the
13 charge.

14 JUDGE CANNATARO: Counsel, I understand the logic
15 of your argument, I really do. But in an effort to help
16 you understand what - - - what Justice Lynch might be
17 referring to, if you go back to Caden N., it is couched in
18 terms of the sufficiency of proof at - - - in a vehicular
19 manslaughter. And it - - - it doesn't suggest, certainly
20 not explicitly and questionably, even implicitly, that it
21 has a broader application to these other - - - you know,
22 straight-up intoxication impairment violations.

23 MR. HUG: I agree that they attempted to thread
24 that needle in Caden N.

25 JUDGE CANNATARO: They did.

1 MR. HUG: I don't think - - -

2 JUDGE CANNATARO: Successfully or unsuccessfully
3 is - - - is another issue.

4 MR. HUG: I mean, but is trial counsel to be a
5 shrinking violet and not make a - - - an argument that has
6 no downside - - -

7 JUDGE TROUTMAN: So is it your argument - - -

8 MR. HUG: - - - that the CJI committee - - -

9 JUDGE TROUTMAN: - - - that counsel was basically
10 ineffective for not being aware of the cases that were
11 percolating in the system, arguments that were able - - -
12 that he could have offered, considering the nature and
13 circumstances of this particular case? Is - - - is that
14 basically what you're saying?

15 MR. HUG: It doesn't appear from the record that
16 trial counsel was aware of Caden N.'s existence. He says
17 we'll do the standard charge. It's kind of flip. It's,
18 you know, the end of the trial. He hadn't made an omnibus
19 motion.

20 JUDGE TROUTMAN: And you're suggesting he should
21 have been?

22 MR. HUG: Should have been aware of it, yes,
23 certainly. Especially given the fact that there has been
24 this tension - - - you know, if you read Cruz and you're
25 grasping for, okay, 1192(4) or its predecessor existed at

1 the time that Cruz was decided, and it was ignored. Why?

2 Well, I think it was ignored because it was
3 inconvenient. And it's inconvenient because you can't say
4 that the reason why these two terms are different is
5 because we look to the penalty. And then when we look to
6 the penalty and reverse engineer, it's like, well, you
7 know, it doesn't work both ways. It's heads I win, tails
8 you lose.

9 JUDGE GARCIA: Counsel, it seems the only court
10 that ever decided this issue the way you would like it
11 decided is the Third Department, has said that it doesn't
12 apply here.

13 MR. HUG: The Fourth Department one?

14 JUDGE GARCIA: The Third Department said it - - -

15 MR. HUG: Oh.

16 JUDGE GARCIA: In your case - - -

17 MR. HUG: Oh, yes.

18 JUDGE GARCIA: - - - it said Caden N. doesn't
19 apply. So even if they had asked for this charge and the
20 judge said no because Caden N. doesn't require it, it seems
21 like the Third Department would have affirmed and said the
22 judge is right. So how could it be ineffective - - -

23 MR. HUG: Well, the CJI Committee offered up in
24 December of 2021, that it would be in the judge's - - -
25 trial judge's discretion to read - - -

1 JUDGE CANNATARO: I mean, they said it's not
2 clear that whether it applies to this type of case or not.
3 Right?

4 MR. HUG: Right.

5 JUDGE GARCIA: So if it's in the discretion, how
6 then is it an error where the Third Department, who created
7 the rule, even at this time, is saying it doesn't apply
8 here?

9 MR. HUG: Because it's difficult to reason to the
10 ultimate decision that you're going to make in Dondorfer,
11 especially when you're asking for a jury charge on a case
12 that is this slim.

13 JUDGE GARCIA: Okay. Let's assume, just for
14 purposes of this discussion, that we uphold the Fourth
15 Department in Dondorfer, how does that affect your
16 argument?

17 MR. HUG: That's a problem.

18 JUDGE CANNATARO: That is a problem, right?

19 JUDGE HALLIGAN: Do they rise and fall together?

20 MR. HUG: I - - - well, yes. Because ultimately
21 I take the People's position is, like, if you return it for
22 a new trial because of ineffective assistance of counsel,
23 that ineffectiveness being the charge that you wanted, you
24 aren't entitled to.

25 JUDGE CANNATARO: But on the pure legal question,

1 we're still dealing with the issue that Caden N. was the -
2 - - the law of the land where we were at the time, right?

3 MR. HUG: Yes.

4 JUDGE CANNATARO: I mean, it might be a very
5 academic question, but it's still a - - - a question.

6 MR. HUG: I suppose you could find that he was
7 deprived of the unreasonable performance of - - - the
8 reasonable performance of counsel.

9 CHIEF JUDGE WILSON: Well, that's the question,
10 isn't it, right?

11 MR. HUG: Yeah. That's the question.

12 JUDGE RIVERA: That's just not - - - you can't
13 have a fair trial if the lawyer is not aware of precedent
14 in their jurisdiction.

15 CHIEF JUDGE WILSON: That is - - - suppose Caden
16 - - - suppose Caden N. were binding precedent, all fours,
17 right?

18 MR. HUG: Yes.

19 CHIEF JUDGE WILSON: So we - - - we eliminate the
20 foul up that we have here. Then it seems to me that that's
21 a tougher question regardless of how Dondorfer comes out?

22 MR. HUG: Yes. If - - - if - - - wait. If Caden
23 N. was broader?

24 CHIEF JUDGE WILSON: If Caden N. was not a
25 manslaughter case but was a driving case.

1 MR. HUG: It was this a strict statutory
2 interpretation that impaired in drug cases - - -

3 CHIEF JUDGE WILSON: Yep. Yep.

4 MR. HUG: - - - regardless of where - - -

5 CHIEF JUDGE WILSON: So - - - so it's binding
6 precedent at the time, and the lawyer didn't know of it or
7 didn't raise it?

8 MR. HUG: No question, I think. No question.
9 Now when - - - if - - -

10 JUDGE HALLIGAN: No question, what - - - what?

11 MR. HUG: No question that it would have been
12 ineffective. If the question is what would be the remedy
13 if Dondorfer is decided together with - - -

14 JUDGE HALLIGAN: It would be on a course, you're
15 saying?

16 JUDGE CANNATARO: But the problem here is it's
17 not so clear cut, right?

18 MR. HUG: But - - -

19 JUDGE RIVERA: But it can't - - - you cannot be
20 ineffective if, on that appeal the - - - the court says
21 that is an incorrect interpretation or we - - - we no
22 longer follow that. Just - - - it's just - - -

23 MR. HUG: I'm not resisting you on that.

24 JUDGE RIVERA: - - - how can that be?

25 MR. HUG: I have - - - like that is a thorn bush

1 that is - - -

2 JUDGE RIVERA: Yes.

3 MR. HUG: - - - could I envision a way that you
4 could say, counsel was ineffective by not knowing Caden N.
5 so we must presume that he was ineffective elsewhere?

6 Well, on the record here, he didn't make an omnibus motion
7 when there's a traffic stop issue. That's in the record
8 and - - - and folded into the brief.

9 I think it demonstrates a pattern of being
10 unprepared for the file and unprepared for the law. If you
11 were to - - - if you were to say the absence of any
12 reference to Caden N. is demonstrative of counsel's
13 ignorance.

14 JUDGE RIVERA: No. All I'm saying is, I - - - I
15 don't see a lawyer's ineffective for arguing a position
16 that is rejected. That - - - that - - - I just don't see
17 that.

18 MR. HUG: Well, at the time, I don't think that
19 Caden N. was rejected. I think that Caden N. was
20 inartfully - - -

21 JUDGE RIVERA: I'm saying in this case. In this
22 case.

23 MR. HUG: Oh, well, yeah. If you - - - if you
24 invalidate Caden N., which is the law in the Third
25 Department.

1 JUDGE RIVERA: Right. We're - - - we're back to
2 Judge Garcia's question. How are you ineffective when the
3 court itself is saying what you would have requested would
4 not have been correct?

5 MR. HUG: Because of the case that we're on
6 appeal now, Ambrosio?

7 JUDGE RIVERA: Correct.

8 MR. HUG: Well, I - - - again, I think - - -

9 JUDGE RIVERA: Because it's in this case - - -

10 MR. HUG: - - - everything is so linked it's
11 impossible to start to untangle them. I think Dondorfer is
12 going to be very critical in the remedy that is - - - that
13 is meted out here for Mr. Ambrosio.

14 CHIEF JUDGE WILSON: Thank you.

15 MS. DOUTHAT: Good afternoon. May it please the
16 court. Jamie Douthat for the People of the State of New
17 York.

18 Your Honors, defendant has failed to meet his
19 high burden of demonstrating that counsel's performance was
20 constitutionally deficient.

21 JUDGE HALLIGAN: So why wasn't it ineffective to
22 at least acknowledge and request something under Caden N.?

23 MS. DOUTHAT: So at the time of the defendant's
24 trial, there was no clear cut or dispositive law.

25 JUDGE HALLIGAN: Well, that - - - that - - -

1 that's the question, right? But - - - but Caden N. is on
2 the books, right? And whether or not it covers this
3 circumstance or is limited to the offense there, I think,
4 is the open question.

5 So why wasn't it ineffective in the face of that
6 uncertainty not to give it a shot?

7 MS. DOUTHAT: So I - - - I don't think - - - I
8 think Caden N. the - - - I think the Third Department
9 intentionally tried to make it a narrow case to pertain
10 specifically to vehicular manslaughter.

11 I think you can see that by the express language
12 and the holding of Caden N. And then, additionally - - -

13 JUDGE HALLIGAN: You think that it's clear on its
14 face that Caden N. is limited only to that offense and
15 can't be read, as the defendant argues, in Dondorfer more
16 broadly?

17 MS. DOUTHAT: Yes. Because the Third Department
18 in this very case said that that was what they did not
19 intend.

20 JUDGE CANNATARO: But at the time, you could have
21 - - -

22 JUDGE HALLIGAN: The time.

23 JUDGE CANNATARO: - - - made the broader
24 argument, right?

25 The question really is, I think - - - I think

1 what Judge Halligan might be getting to is do you have to,
2 or do you not have to, make that argument in order to be
3 effective trial counsel?

4 MS. DOUTHAT: So I don't believe so because that
5 would have been a novel argument at the time because the
6 Caden N. decision applied to specifically vehicular
7 manslaughter. So that would have required counsel to make
8 a novel argument to the trial court. And I think that's
9 also evident by the fact that the criminal jury
10 instructions that came out after the defendant's trial said
11 that - - - you know, ultimately, that it wasn't clear - - -
12 it was not clear - - -

13 JUDGE TROUTMAN: What about the suggestion that
14 counsel wasn't aware of Caden N. in any event, even to make
15 the argument that it would apply to the case?

16 MS. DOUTHAT: So the - - - the standard is
17 meaningful representation. And I think that goes back to
18 what you said before. That we're asking then for the
19 attorney to have perfect representation and come up with a
20 novel argument. And that's not the standard for
21 ineffective assistance of counsel.

22 JUDGE HALLIGAN: It doesn't seem to me like it's
23 - - - it's a huge stretch to ask the question whether Caden
24 N. applies only to that offense or whether it applies more
25 broadly. I - - - I mean, it - - - it's not particularly

1 out of reach to read the case that way.

2 So I'm just struggling to understand why defense
3 counsel, who knew about the case, wouldn't pursue it. I -
4 - - well, I - - - I don't see how that could be a strategic
5 determination. I don't see any possible downside from it.
6 Do you?

7 MS. DOUTHAT: I - - - I think there's a
8 legitimate explanation for why - - -

9 JUDGE HALLIGAN: And what would that be?

10 MS. DOUTHAT: - - - he - - - he wouldn't have
11 asked for it.

12 JUDGE HALLIGAN: Why?

13 MS. DOUTHAT: Because I think that the decision
14 in and of itself narrows it down to just the vehicular
15 manslaughter, so.

16 JUDGE HALLIGAN: Okay. But - - - but if I were
17 to read the decision as leaving that question open and not
18 answering it, then would there be any strategic rationale
19 not to ask for the instruction?

20 MS. DOUTHAT: I don't believe so. But I don't
21 think that that's the standard that would make the counsel
22 ineffective, because that would have been making a novel
23 argument to the trial court that, you know, the trial court
24 was free to reject and not go along with. So I - - - I
25 don't think that that is the standard that we're dealing

1 with as to whether or not the counsel was ineffective.

2 I think that this court has determined that when
3 we're dealing with what - - - with this situation, it's a
4 one-issue argument, and that counsel cannot be ineffective
5 when the resolution of it depends on a novel question or
6 there isn't clear appellate authority. And I think that
7 that's what we're dealing with here.

8 So there was no clear cut and dispositive
9 appellate authority at the time. I don't think that,
10 counsel - - - I think that if you look at the overall
11 representation of the trial, that the defendant received
12 meaningful representation. Counsel got an acquittal on one
13 of the counts. He made a motion for directed verdict. He
14 cross-examined the witnesses.

15 JUDGE RIVERA: What - - - what case have we said
16 clear-cut appellate authority? What - - - what - - - when
17 - - - when did we use that phrase?

18 MS. DOUTHAT: In several cases, Judge. In fact,
19 most recently or not - - - maybe not most recently. But I
20 know in the - - - the Saenger decision the court said at
21 the time of trial, there was no clear-cut appellate
22 authority adopting the statutory interpretation that the
23 defendant now urges is correct. And I would argue that
24 that is what we're - - - exactly what we're dealing with
25 here. And that is why the counsel was not ineffective in

1 this case.

2 JUDGE RIVERA: So unless the appellate
3 determination is obviously exactly on point, decided the
4 issue that's before the court and the next defense counsel,
5 if they're not aware of it, that doesn't make them
6 deficient?

7 MS. DOUTHAT: So yes. If this was a - - -

8 JUDGE RIVERA: Regardless of what strong
9 arguments they may have?

10 MS. DOUTHAT: Because they're not expected to
11 make novel arguments. We're looking at meaningful
12 representation.

13 JUDGE RIVERA: Well - - -

14 MS. DOUTHAT: And so if this case - - -

15 JUDGE RIVERA: - - - it's not completely novel.
16 There is some basis. Right?

17 MS. DOUTHAT: Well, I would - - -

18 JUDGE RIVERA: It's a different argument; you are
19 correct.

20 MS. DOUTHAT: So I mean, I would disagree, Judge.
21 I do think that especially evidenced by Ambrosio, that
22 that's not what the Third Department meant when they issued
23 the Caden N. decision.

24 JUDGE HALLIGAN: But aren't we looking at it at
25 the time at which the decision was made, not down the road?

1 So I'm not sure how Ambrosio helps you, because
2 isn't - - - doesn't that come down subsequently?

3 MS. DOUTHAT: Yes. Because that is the - - -
4 that's - - - yes.

5 JUDGE HALLIGAN: Okay. So the fact that that's
6 the way the Appellate Division ended up going, I don't
7 think that bears squarely on the question of whether the
8 failure to request was ineffective or not, does it?

9 MS. DOUTHAT: So I mean, when we're looking at
10 ineffective assistance of counsel, we're looking at at the
11 time of trial, so.

12 JUDGE HALLIGAN: Right. Which is - - - and
13 Ambrosio - - - correct me if I'm wrong. But I thought
14 Ambrosio was decided after that point?

15 MS. DOUTHAT: Yes. I mean, that - - - that's the
16 case that we're dealing with - - -

17 JUDGE CANNATARO: Ambrosio is this case, right?

18 MS. DOUTHAT: That's this case, yes.

19 JUDGE HALLIGAN: Okay. I'm sorry. I'm talking
20 about Dondorfer - - -

21 MS. DOUTHAT: Yes. That - - - that is the - - -

22 JUDGE HALLIGAN: - - - pardon me.

23 MS. DOUTHAT: Yes. Oh, I'm - - -

24 JUDGE HALLIGAN: Too many - - - too many, yes.

25 Thank you for that.

1 The fact that it - - - it - - - so all we're - -
2 - all - - - sorry. Let me try to ask a - - - a - - - a
3 somewhat clear question.

4 The only thing that is - - - is in place at that
5 point is Caden N.; is that right?

6 MS. DOUTHAT: That is correct.

7 JUDGE HALLIGAN: Okay. And we don't know
8 anything about how the court will decide whether or not
9 it's confined to the offense there at the point in time
10 that counsel makes a decision whether to request an
11 instruction?

12 MS. DOUTHAT: Yes, Your Honor.

13 JUDGE HALLIGAN: Thank you. And apologies for
14 the confusion.

15 MS. DOUTHAT: And so if there are not any more
16 questions, I will ask the court to affirm.

17 Thank you.

18 CHIEF JUDGE WILSON: Thank you.

19 MR. HUG: I don't think this was a novel question
20 or a novel argument to be made. I think - - -

21 JUDGE TROUTMAN: But what - - - what do you say
22 about the argument that overall, the representation, the
23 other actions that the attorney took, were consistent with
24 the effective assistance of counsel?

25 MR. HUG: Well, no omnibus motion, no challenge

1 to the stop where the defendant asserted that - - - well,
2 the stop was based upon a loud muffler that the defendant
3 said was - - - had just passed inspection. He didn't - - -

4 JUDGE TROUTMAN: But what about some of the
5 things that the attorney did? There was a charge where
6 there was an acquittal?

7 MR. HUG: There was. He didn't preserve legal
8 sufficiency for me here, though, because he didn't make his
9 motion for a directed verdict at the end of the defense
10 case. That was a slip up. And then the - - - I - - -

11 JUDGE TROUTMAN: Is there a difference between a
12 slip up and being ineffective?

13 MR. HUG: I don't know. I - - - the - - - the -
14 - - the failure to make the trial order of dismissal case
15 as a - - - as this court is aware, is something that is
16 frequently failed.

17 JUDGE TROUTMAN: It's a standard.

18 MR. HUG: It's a standard bungle, I guess, you'd
19 say. Not apparently taught by appellate lawyers and - - -
20 and to new - - - new trial attorneys, maybe.

21 But no, I think on the whole, the - - - the - - -
22 the charge is the most important part of the case. You
23 look at that CJII when you get the case come in the door.

24 JUDGE TROUTMAN: So it's the impact that that - - -
25 - that error alone had on this defendants?

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MR. HUG: Was critical. I think you can find - -
- I think you can also find that the failure to make an
omnibus motion in a traffic stop case is another
headscratcher that - - - that suggests that the failure to
raise Caden N. was not strategic. It was as a result of
not understanding it. And that it wasn't I don't want to
make a novel argument because the argument here was simply
a logical extension.

The only logical extension that can be drawn from
Caden N. is that Caden N. applies to 1192(4).

Thank you.

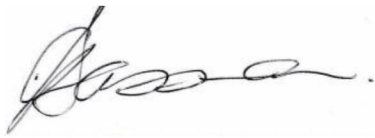
CHIEF JUDGE WILSON: Thank you.

(Court is adjourned)

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C E R T I F I C A T I O N

I, Chrishanda Sassman-Reynolds, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Ambrosio (Jason J.), No. 5 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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