State of New York
Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Wednesday, September 11, 2019

No. 75 People v Rong He

Rong He was accused of slashing and stabbing two men on the floor of a Brooklyn nightclub in February 2011. He was arrested six months later when one of the victims, Chun Zhang, recognized him on the street, followed him to his Brooklyn apartment building, and called 911. Detectives entered the building through an open door, apprehended He on the third floor outside his apartment door and took him down to the street, where Zhang identified him as the assailant. He was handcuffed and taken to the 68th Precinct, where a detective who had investigated the nightclub incident processed his arrest. The detective interviewed Zhang about how he spotted and followed He on the street and directed the police to the apartment building. About 4½ hours after his arrest, and after he was given and signed Miranda warnings, He gave a statement in which he admitted slashing two men at the nightclub, but claimed they were the aggressors and said he acted in self-defense.

Supreme Court denied He's motion to suppress his statement. The court found that his warrantless arrest in the hallway outside his apartment was unlawful under Payton v New York (445 US 573), but ruled that the statement was attenuated from the illegal arrest. A jury found He guilty of two counts of second-degree assault and one of fourth-degree weapon possession, and he was sentenced to 11 years in prison.

The Appellate Division, Second Department affirmed in a 3-1 decision, saying, "Supreme Court's determination that the defendant's statement was attenuated from his illegal arrest is supported by the record. The defendant was not interviewed by the police until approximately 4½ hours after his arrest, and no questioning occurred until after ... the defendant initialed and signed the Miranda sheet.... The interview was conducted in a different location than the arrest, and by police personnel who were not involved in the arrest.... In addition..., the record supports the court's finding that there was no flagrant misconduct.... There is no indication that the conduct of the arresting officers was motivated by bad faith or a nefarious police purpose...." The Appellate Division unanimously rejected He's claim that prosecutors committed a Brady violation by refusing to disclose the contact information of potential witnesses.

The dissenter said, "Cases that have found sufficient attenuation between an unlawful arrest and a custodial statement have generally involved an intervening event, which could be deemed the precipitating cause of the statement, other than: (1) the passage of several hours; (2) the fact that the statement was elicited by a detective who was not one of the arresting officers; and (3) the fact that Miranda warnings ... were given.... Here, there was no such intervening event.... [T]he showup identification that occurred immediately after the arrest cannot be deemed an intervening event because the showup identification ... flowed directly from the arrest.... Finally..., I believe that the police misconduct identified by the Supreme Court was flagrant. The court's finding that the arrest was illegal was not based solely on the court's conclusion that the arrest was made in the defendant's home in violation of Payton," but "was also based on its conclusion that, at the time of the arrest, the police lacked probable cause to believe that the defendant had committed a crime...."

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For respondent: Brooklyn Assistant District Attorney Seth M. Lieberman (718) 250-2000

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To be argued Wednesday, September 11, 2019

No. 76 People v Manuel Rodriguez

Manuel Rodriguez opened a checking account in his own name at a Manhattan branch of J.P. Morgan Chase Bank with a $60 deposit on August 13, 2009. The next day, an unidentified man deposited a check – which was stolen from the accounting firm of Konigsberg, Wolfe, and Company (KWC), forged in the amount of $11,340, and made payable to Manuel Rodriguez – into Rodriguez's new account. The bank's surveillance video established that the depositor was not Rodriguez. A day later, on August 15, Rodriguez withdrew $11,000 from the account in a series of three transactions, making withdrawals of $4,000 and $3,000 from two Chase branches in Manhattan and a $4,000 withdrawal from a Chase branch in Brooklyn. He was arrested seven months later and charged with third-degree grand larceny, which applies to a defendant who "steals property" worth more than $3,000. Penal Law § 155.05(1) provides, "A person steals property and commits larceny when, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof."

Rodriguez moved to dismiss the charge for insufficient evidence, which he said established that someone else stole the check from KWC and deposited it into his account, while he withdrew money from his own account. He said the proof might show he was guilty of criminal possession of stolen property, but not that he committed grand larceny by taking "property from an owner." Supreme Court denied the motion. Rodriguez was convicted of third-degree grand larceny and sentenced to 1⅓ to 4 years in prison.

The Appellate Division, First Department affirmed, ruling the verdict was based on legally sufficient evidence. "The 'taking' element was satisfied by proof the defendant 'exercised dominion and control' over the proceeds of the check 'in a manner wholly inconsistent with the owner's continued rights' ... by withdrawing the money from his account for his personal use." Even if there were no evidence linking him to the check, it said, "it would not undermine the conviction because the larceny charge was not based on the theft of the check (i.e., that piece of paper), but the proceeds thereof.... In any event, there was ample circumstantial evidence from which the jury could have reasonably inferred that defendant participated in a scheme, with at least one other person, to steal the check, deposit it, and withdraw its proceeds...."

Rodriguez argues, "Neither the statute nor the case law supports the idea that [he] may be found guilty of grand larceny where he was not connected to the theft of the check from the firm and where he only ever possessed the proceeds of the check that was stolen and deposited by someone else. The evidence might have supported a finding of criminal possession of stolen property or perhaps some other offense related to the proceeds of stolen property. But where his withdrawal of funds from his own account was neither a 'taking' nor a theft 'from an owner,' he was not guilty of grand larceny, and his conviction should be reversed."

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State of New York
Court of Appeals

To be argued Wednesday, September 11, 2019

No. 77 People v Omar Deleon

In January 2016, a joint task force of the U.S. Postal Service and the New York Police Department were conducting surveillance of a sidewalk mail collection box in the Bronx, which had been the site of prior "mailbox fishing" thefts. The task force had placed $3,050 worth of money orders in the mailbox. Omar Deleon and another man placed a fishing device, a plastic water bottle coated with a sticky substance and tied to a string, into the mailbox and walked away. Deleon returned and began to pull the bottle back out of the mailbox, but was apprehended before he could retrieve it. Task force members pulled the bottle out of the box and found four pieces of mail stuck to it, but they did not record any information about what the envelopes contained. Deleon admitted to a postal inspector that he was to be paid $100 for each mailbox he fished. He was indicted on charges of attempted grand larceny in the third degree (for allegedly attempting to steal money orders worth more than $3,000) and fourth degree (for allegedly attempting to steal more than $1,000), as well as possession of burglar's tools.

Supreme Court partially granted Deleon's motion to dismiss the indictment for insufficient evidence by dismissing the third-degree attempted grand larceny count and reducing the fourth-degree count to attempted petit larceny. The court said there was insufficient evidence to establish that Deleon "acted with a specific intent ... to commit the specific crimes of either Grand Larceny in the Third or Fourth Degrees by stealing items of mail valued at $1000.00 or more..., in the absence of any evidence that he knew or believed that mail in that amount could be obtained upon his theft."

The Appellate Division, First Department reversed and reinstated the original grand larceny charges, saying the lower court erred in requiring "proof of intent with regard to the property value elements of attempted grand larceny in the third and fourth degrees. These elements are strict liability aggravating factors when the completed crimes are charged." It said "any ambiguity" about whether a different rule applies to attempted theft crimes "has been resolved by the Court of Appeals' holding in People v Miller (87 NY2d 211 [1995]), that a strict liability aggravating factor of a completed crime is not a 'result' to which an intent requirement attaches when an attempt to commit the completed crime is charged. Accordingly, the mental culpability requirements for an attempt and a completed crime are identical..., and the court erred in finding that the attempted grand larceny charges required evidence of intent to steal property of a certain value."

Deleon argues that this case is not governed by Miller, which held that the defendant was properly charged with first-degree attempted robbery because he actually caused serious physical injury to the victim (the aggravating factor) when he attempted unsuccessfully to steal the victim's property. He says, "Here, Mr. Deleon's intent was to steal property, a petit larceny. But there is no parallel result to Miller here, because Mr. Deleon's 'fishing expedition' did not result in him actually 'catching' any of the money orders that the Joint Task Force had planted in the mailbox." He says the attempted grand larceny charges were properly reduced to petit larceny "because the prosecution did not present any evidence that Mr. Deleon intended to steal property in excess of $1,000, nor that he knew or could have known the value of the contents of the mailbox or of the items attached to the fishing device."

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