Buffalo Law Review

Volume 9 | Number 1 Article 76

10-1-1959

Criminal Law—Failure of Judge to Answer Jury's Request for Further Instructions

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to warrant the extraordinary remedy of *coram nobis* even though the defect appears on the face of the record and an appeal would have raised the question of the deprivation of his rights.[64] However, in the absence of clear and convincing evidence to the contrary, the court is bound to presume that the lower court performed its duty.[65] In reviewing a case such as this the court is bound by the findings of the lower court, but may view the entire record and evaluate, as a matter of law, the situation existing at the time of the alleged deprivation.[66] In *People v. Marincic*[67] the court held, granting a writ of *coram nobis,* that the mere advising of the defendant of his right to counsel was not sufficient where the defendant did not fully understand his rights and thus did not have a fair opportunity to exercise them within the meaning of Section 699 of the New York Code of Criminal Procedure.

In viewing the record as a whole the majority and minority differed as to whether there was sufficient evidence that the defendant fully understood his rights.

FAILURE OF JUDGE TO ANSWER JURY'S REQUEST FOR FURTHER INSTRUCTIONS

Section 427 of the New York Code of Criminal Procedure provides that after the jury have retired for deliberation, "if they desire to be informed of a point of law arising in the cause, . . . the information required must be given . . ." The mandate of this statute "leaves to the trial court no discretion whatever as to whether or not to answer a proper question from the jury, even though the original charge contains a correct answer to that same question."[68] It is settled law that a judge may not decline to answer a jury's request for further instructions.[69] However, a failure by the court to categorically answer any question propounded by a jury need not be reversible error. In each case the reviewing court must decide whether there was serious prejudice to the defendant's rights.[70] Naturally, where the failure to answer involves a vital point, it may not be disregarded as harmless.

In the case of *People v. Miller*[71] the trial court failed to answer questions of law as to possible verdicts to be arrived at. The court, instead, offered to reread "the entire charge on the crime" if the jury wanted it. Although the foreman replied: "I don't think it is necessary," the Court of Appeals, in a 5-1 decision, said that the failure to answer the question constituted reversible error and a new trial was ordered for the defendant, who had been found guilty of felony murder. The high court, relying heavily on the lucid decision by Judge Desmond in *People v. Gonzalez,*[72] said that since the confusion of the

64. People v. Silverman, 3 N.Y.2d 200, 165 N.Y.S.2d 11 (1957); People v. McLaughlin, 291 N.Y. 480, 53 N.E.2d 356 (1944); People v. Snyder, 297 N.Y. 81, 79 N.E.2d 657 (1947).
65. People v. Morhous, 268 App. Div. 1016, 53 N.Y.S.2d 210 (3d Dep't 1949).
66. People v. Marincic, 2 N.Y.2d 181, 158 N.Y.S.2d 569 (1957).
67. *Ibid.*
68. People v. Gonzalez, 293 N.Y. 259 at 262, 56 N.E.2d 574, 576 (1944).
69. People v. Gezzo, 307 N.Y. 385 at 396, 121 N.E.2d 380, 385 (1954).
70. People v. Cooke, 292 N.Y. 185 at 188, 54 N.E.2d 357, 359 (1944).
71. 6 N.Y.2d 152, 188 N.Y.S.2d 534 (1959).
72. *Supra* note 68.

jury centered on the charges as to felony murder, and that defendant's life depended upon the jury's proper understanding of the elements of the crime,[73] "a mere offer to reread the principal charge—although it was correct—would be of little help to a perplexed jury . . . This is so, even though the foreman later stated that it was not necessary to repeat the charge."

Thus we see, once again, that when a deliberating jury requests information pertaining to a vital point, a response that fails to provide a proper answer is reversible error—and a trial court's offer to reread the entire charge is not a proper answer.

SUFFICIENCY OF INDICTMENT FOR RECKLESS DRIVING

It is well settled that an indictment must apprise a defendant of every material element of the crime charged.[74] An indispensable element of the crime of reckless driving is that the defendant's driving had unreasonably interfered with the use of the highway.[75] In *People v. Armlin*[76] defendant was charged with reckless driving under an indictment which did not allege that he unreasonably interfered with the use of the highway, but which did allege that he drove his vehicle across the center line of the highway into the path of an approaching vehicle without any warning and at a high rate of speed, in violation of the statute forbidding reckless driving.

The defendant contended that the indictment failed to charge him with unreasonable interference with the use of the highway.

Reinstating the conviction, the Court of Appeals held that the indictment need not in terms charge that defendant acted unreasonably if it describes an act which constitutes unreasonable interference.[77] It is only when the indictment neither charges unreasonableness nor describes an act which is unreasonable that a defendant can complain that he has not been informed of that element of the crime.[78]

Since the purpose of the rule is to enable a defendant to prepare his defense, a defendant can hardly claim surprise when all the elements of the crime charged are descriptively detailed in the indictment, and the statute availed of by the State is made known to him.

POSSESSION OF MATERIALS USED IN THE POLICY GAME

Section 974 of the New York Penal Law forbids knowingly possessing any article of any kind commonly used in promoting the policy game.[79] In *People*

73. People v. Flynn, 290 N.Y. 220, 48 N.E.2d 495 (1943).
74. People v. Allen, 5 Denio (N.Y.) 76 (1847); Dedieu v. People, 22 N.Y. 178 (1860); People v. Santoro, 229 N.Y. 277, 128 N.E. 234 (1920). *Cf. dicta* in People v. Miller, 143 App. Div. 251, 128 N.Y. Supp. 549 (1st Dep't 1911); People v. Colburn, 162 App. Div. 651, 147 N.Y. Supp. 689 (2d Dep't 1911).
75. N.Y. TRAFFIC & VEHICLE LAW § 58.
76. 6 N.Y.2d 231, 189 N.Y.S.2d 179 (1959).
77. N.Y. CODE CRIM. PROC. § 283, § 285.
78. People v. Sas, 172 Misc. 845, 16 N.Y.S.2d 380 (County Ct. 1939); People v. Wojcinski, 5 Misc. 2d 292, 159 N.Y.S.2d 539 (County Ct. 1957).
79. N.Y. PEN. LAW § 974.