

SUPREME COURT OF COLORADO

People v. Delgado

Delgado, 2019 CO 82 (Colo. 2019) · No. 17SC29 · Decided September 30, 2019

SUMMARY

The Colorado Supreme Court held that robbery and theft from a person are mutually exclusive offenses when based on a single taking because their force elements negate one another. The court concluded that entering judgment on both guilty verdicts constituted plain error and that retrial, rather than maximizing or vacating both convictions, was the proper remedy. The court affirmed the Colorado Court of Appeals' judgment granting a new trial.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Hood; Chief Justice Coats; Justice Boatright; Justice Gabriel; Justice Márquez; Justice Hart; Justice Samour
JURISDICTION	Colorado
DECIDED	September 30, 2019
DOCKET	17SC29
DISPOSITION	affirmed
PROCEDURAL POSTURE	The People petitioned for certiorari review of the Colorado Court of Appeals' decision reversing Delgado's convictions for robbery and theft from a person and ordering a new trial.
STANDARD OF REVIEW	Whether verdicts are mutually exclusive is reviewed de novo. Unpreserved constitutional errors are reviewed for plain error, requiring an obvious and substantial error that undermines the fundamental fairness and reliability of the judgment.
PRECEDENTIAL VALUE	published and precedential Colorado Supreme Court opinion
PARTIES	The People of the State of Colorado v. Johnny Guillermo Delgado

TOPICS

[criminal procedure](#) [jury instructions](#) [appellate procedure](#) [preservation of error](#) [standard of review](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether robbery and theft from a person are mutually exclusive offenses when both convictions arise from a single taking.
2. Whether the unpreserved error resulting in mutually exclusive guilty verdicts constituted plain error.
3. Whether the proper remedy for mutually exclusive guilty verdicts is to maximize the convictions, acquit on both charges, or order a new trial.

HOLDINGS

1. When an essential element of one offense negates an essential element of another, guilty verdicts for the offenses are mutually exclusive. Because robbery requires taking by force and theft from a person requires taking by means other than force, a defendant may not be convicted of both offenses when the convictions are based on a single taking.
2. The error was plain because the conflict between the force element of robbery and the no-force element of theft from a person was obvious and substantial, and it cast serious doubt on the reliability of the judgment.
3. The proper remedy for mutually exclusive guilty verdicts is a new trial when the conflicting verdicts make it impossible to determine what the jury intended.
4. When offenses have mutually exclusive elements, the trial court should instruct the jury that the defendant may be convicted of one offense or the other, but not both.

KEY QUOTATIONS

“We hold that, because the elements of theft from a person and robbery negate each other when they are based on a single taking, a defendant may not be convicted of both offenses.” (¶ 5)

“Because such mutually exclusive convictions leave us without a meaningful way to discern the jury’s intent, the proper remedy is a new trial.” (¶ 5)

“Thus, here, the court should have instructed the jury that Delgado could be convicted of robbery or theft, but not both.” (¶ 30)

“The proper remedy for mutually exclusive verdicts is retrial.” (¶ 45)

FACTUAL BACKGROUND

R.B. was attacked from behind and knocked unconscious after attempting to enter a closed bar. A police officer saw Delgado rummaging through R.B.'s pockets and then fleeing with several items; officers later recovered R.B.'s phone, wallet, and keys near Delgado. Delgado was charged with and convicted of both robbery and theft from a person based on the single taking.

PROCEDURAL HISTORY

A jury convicted Delgado of robbery and theft from a person based on a single taking, but could not reach a verdict on a misdemeanor assault charge, which the district attorney dismissed. The Colorado Court of Appeals held that the convictions were mutually exclusive, that the error was plain, and that a new trial was required. The Colorado Supreme Court granted the People's petition for certiorari and affirmed.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

A new trial is required on the robbery and theft-from-a-person charges.

CASES CITED

- People v. Frye, 898 P.2d 559 (Colo. 1995)
- Lucero v. People, 2012 CO 7, 272 P.3d 1063
- Montez v. People, 2012 CO 6, 269 P.3d 1228
- People v. Miller, 113 P.3d 743 (Colo. 2005)
- People v. Stewart, 55 P.3d 107 (Colo. 2002)
- Hagos v. People, 2012 CO 63, 288 P.3d 116
- Wilson v. People, 743 P.2d 415 (Colo. 1987)
- Candelaria v. People, 148 P.3d 178 (Colo. 2006)
- People v. Weare, 155 P.3d 527 (Colo. App. 2006)
- People v. Beatty, 80 P.3d 847 (Colo. App. 2003)
- People v. Lee, 914 P.2d 441 (Colo. App. 1995)
- United States v. Powell, 469 U.S. 57 (1984)
- Dunn v. United States, 284 U.S. 390 (1932)
- People v. Warner, 801 P.2d 1187 (Colo. 1990)
- Bravo-Fernandez v. United States, 137 S. Ct. 352 (2016)
- People v. Bartowsheski, 661 P.2d 235 (Colo. 1983)
- People v. Lowe, 660 P.2d 1261 (Colo. 1983)
- Callis v. People, 692 P.2d 1045 (Colo. 1984)
- People v. Atkins, 844 P.2d 1196 (Colo. App. 1992)
- State v. Chyung, 157 A.3d 628 (Conn. 2017)
- State v. Owens, 766 S.E.2d 66 (Ga. 2014)
- State v. Speckman, 391 S.E.2d 165 (N.C. 1990)
- Sullivan v. Louisiana, 508 U.S. 275 (1993)
- In re Winship, 397 U.S. 358 (1970)
- People v. Scott, 2017 CO 16, 390 P.3d 832

- People v. Pollard, 2013 COA 31M, 307 P.3d 1124

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/colorado-supreme-court-of-colorado/2019/people-v-delgado-3i3yy3i0>