

NEW YORK COURT OF APPEALS

People v. Mendez

26 N.Y.3d 1004 (2015) · Decided October 27, 2015

SUMMARY

The New York Court of Appeals held that the trial court committed reversible error by failing to disclose or respond to jury notes requesting translated transcripts of recorded jail calls. The court reversed the order of the Appellate Division and dismissed the indictment, while permitting the People to resubmit the assault charge to a new grand jury.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Chief Judge Lippman; Judge Pigott; Judge Rivera; Judge Abdus-Salaam; Judge Stein; Judge Fahey
JURISDICTION	New York
DECIDED	October 27, 2015
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed from an Appellate Division order affirming his assault conviction. The Court of Appeals reviewed the matter on submissions under 22 NYCRR 500.11.
PRECEDENTIAL VALUE	Published memorandum opinion of the New York Court of Appeals; precedential.
PARTIES	Mendez v. People

TOPICS

- jury instructions
- criminal procedure
- appellate procedure
- evidence

PRACTICE AREAS

- Criminal procedure
- Evidence
- Appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court's failure to disclose to counsel and address the jury's substantive requests for Spanish-to-English transcripts of recorded telephone calls required reversal.

2. Whether the jury's requests could be treated as merely ministerial requests for items not admitted into evidence.

HOLDINGS

1. The jury's requests for the transcripts required a substantive response because the transcripts were necessary to understand significant portions of the recordings and the trial court had expressly invited the jury to request them during deliberations.
2. Reversal was required because the substantive jury notes were neither revealed to the attorneys nor addressed by the trial court.

KEY QUOTATIONS

“Thus, the jury’s requests for the transcripts required a substantive response, and reversal is required because these “substantive jury notes, marked as court exhibits, were neither revealed to the attorneys nor addressed by the court[]” (1005)

“Inasmuch as a significant portion of defendant’s conversations were conducted in Spanish, the jury could not be expected to understand the recordings without the aid of the transcripts” (1005)

FACTUAL BACKGROUND

Defendant was charged with assault based on conduct during a January 2011 street brawl. At trial, the People introduced recordings of telephone calls defendant made while jailed awaiting trial; portions of the conversations were in Spanish, and English-language transcripts were prepared as an aid to the jury. During deliberations, the jury twice requested the transcripts, but the trial court did not inform counsel of the notes or respond before the jury returned a guilty verdict.

PROCEDURAL HISTORY

Defendant was convicted after a jury trial of assault in the second degree arising from a street brawl. During deliberations, the jury requested Spanish-to-English transcripts of recorded jail telephone calls, but the trial court did not disclose the notes to counsel or respond to them. The Appellate Division held that any response would have been ministerial and did not require reversal. The Court of Appeals reversed and dismissed the indictment, while permitting resubmission of the assault charge to a new grand jury.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The order was reversed and the indictment dismissed, with leave to the People, if they be so advised, to resubmit the charge of assault in the second degree to a new grand jury.

CASES CITED

- People v. Silva, 24 N.Y.3d 294 (2014), rearg. denied, 24 N.Y.3d 1216 (2015)
- People v. Mendez, 116 A.D.3d 513, 513 (1st Dep't 2014)
- People v. Miller, 8 A.D.3d 176, 177 (1st Dep't 2004), aff'd as modified, 6 N.Y.3d 295 (2006)

OPINION

PER CURIAM.

OPINION OF THE COURT Memorandum. The order of the Appellate Division should be reversed and the indictment dismissed, with leave to the People, if they be *1005so advised, to resubmit the charge of assault in the second degree to a new grand jury. Defendant was charged with assault for his conduct during a street brawl in January 2011. During the ensuing jury trial, the People introduced into evidence several recordings of telephone calls that defendant made while he was in jail awaiting trial.

Inasmuch as defendant and the other participants in the calls sometimes spoke in Spanish, the People prepared transcripts of the phone calls that included Spanish-to-English translations. The transcripts themselves were not admitted into evidence but were used as an aid to the jurors while they listened to the recordings.

The court told the jurors twice during the course of the trial that the transcripts were not in evidence, but that if they wanted to see the transcripts during deliberations, they should ask to do so, and the court would then bring the jury in the courtroom and distribute the transcripts while the recordings were played back to the jury. During deliberations, the jurors sent, among other notes, two notes requesting to see the transcripts they were given while they were listening to the tape recordings.

The record does not indicate that the trial court informed counsel of these notes or responded to the jury in any way before the jury ultimately found defendant guilty of assault in the second degree. For reasons stated in *People v Silva* (24 NY3d 294 [2014], rearg denied 24 NY3d 1216 [2015]), the Appellate Division erred in holding that reversal was not required.

Contrary to the Appellate Division's determination, the jury's request to see the transcripts did not merely require "the ministerial actions of informing the jury that none of the items they requested were in evidence" (*People v Mendez*, 116 AD3d 513, 513 [1st Dept 2014]). Inasmuch as a significant portion of defendant's conversations were conducted in Spanish, the jury could not be expected to understand the recordings without the aid of the transcripts (cf.

People v Miller, 8 AD3d 176, 177 [1st Dept 2004], affd as mod 6 NY3d 295 [2006]). Moreover, the trial court expressly invited the jurors to ask for the transcripts during deliberations and told them the procedure by which they could see the transcripts, which involved reassembling the jury in the courtroom.

Thus, the jury's requests for the transcripts required a substantive response, and reversal is required because these "substantive jury notes, marked as court exhibits, were neither revealed to the attorneys nor addressed by the court[]" (Silva, 24 NY3d at 300). *1006In light of our holding, we do not reach defendant's remaining contention. Chief Judge Lippman and Judges Pigott, Rivera, AbdusSalaam, Stein and Fahey concur.

On review of submissions pursuant to section 500.11 of the Rules of the Court of Appeals (22 NYCRR 500.11), order reversed and indictment dismissed, with leave to the People, if they be so advised, to resubmit the charge of assault in the second degree to a new grand jury, in a memorandum.