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Double Jeopardy

The defendant claimed that his conviction for attempted arson in the second degree constituted a double jeopardy violation of both the New York State[34] and Federal[35] Constitutions. The Appellate Division, Second Department, held that the defendant had been deprived of his right to have his trial completed in a particular tribunal and determined that reprosecution of the defendant was barred by double jeopardy.[36] The court reversed the conviction and dismissed the indictment.[37]

On Wednesday, October 13, 1993, the jury was charged and commenced deliberations.[38] The next day, one of the jurors notified the court that he was ill and had been vomiting the entire morning.[39] After obtaining the consent of both the prosecutor and

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31. *Allen*, 86 N.Y.2d at 604, 658 N.E.2d at 1015, 635 N.Y.S.2d at 142.

32. *Id.*

33. 631 N.Y.S.2d 922 (App. Div. 2d Dep't 1995).

34. N.Y. CONST. art. I, § 6. Article I, Section 6 of the New York Constitution provides in part: "No person shall be subject to be twice put in jeopardy for the same offense . . . ." *Id.*

35. U.S. CONST. amend. V. The Fifth Amendment provides in pertinent part: "[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb . . . ." *Id.*

36. *Niccolich*, 631 N.Y.S.2d at 924.

37. *Id.*

38. *Id.* at 923.

39. *Id.*

defense counsel, the court instructed the other jurors to go home and return the following morning.[40]

On Friday, October 15, 1993, the court clerk stated that the ill juror had called and indicated that he would not be able to appear for that day.[41] Despite the defense counsel's request to grant a continuance until after the weekend, "the Trial Judge declared a mistrial . . . concluding that it would be unfair to sequester the remaining jurors over the weekend without any assurance that [the ill juror] would be able to return to court on Monday."[42] Subsequently, the defendant pled guilty to attempted arson in the second degree.[43] The defendant then claimed that his conviction should have been reversed because the double jeopardy provisions of both the New York State and Federal Constitutions prohibit retrial unless there is manifest necessity for the mistrial.[44]

Considering this claim, the court cited to *Menna v. New York*.[45] In *Menna*, the United States Supreme Court stated that when double jeopardy is triggered, "federal law requires that a conviction on that charge be set aside even if the conviction was entered pursuant to a counseled plea of guilty."[46] Similarly, in the case at bar, the defendant pled guilty to attempted arson in the second degree. The court determined that this did not "foreclose a double jeopardy challenge" available to the defendant.[47] The court reasoned that the trial court "improvidently exercised its discretion in declaring a mistrial" because the trial court had not adequately considered the alternative of a weekend continuance.[48]

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40. *Id.*
41. *Id.*
42. *Id.*
43. *Id.*
44. *Id.*
45. 423 U.S. 61 (1975).
46. *Id.* at 62.
47. *Niccolich*, 631 N.Y.S.2d at 923.
48. *Id.*

Citing to *People v. Michael*,[49] *In re Enright v. Siedlecki*,[50] *United States v. Perez*,[51] and *United States v. Jorn*,[52] the court in *Niccolich* acknowledged that both the "State and Federal Constitutions prohibit retrial for the same crime unless 'there is a manifest necessity for [the mistrial], or the ends of public justice would otherwise be defeated.'"[53] The court in *Niccolich* determined that there was no manifest necessity justifying the order of a mistrial because the alternative of a weekend continuance was a reasonable alternative that should have been exercised.[54] Citing *Illinois v. Somerville*,[55] the court concluded that the defendant's right to have his trial heard in its entirety by a particular tribunal was violated, and, thus, reprosecution was prohibited by double jeopardy and, as a result, the indictment was dismissed.[56]

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49. 48 N.Y.2d 1, 394 N.E.2d 1134, 420 N.Y.S.2d 371 (1979). In *Michael*, the New York State Court of Appeals stated that "[s]ince the Trial Judge is in the best position to determine whether a mistrial is in fact necessary in a particular case, that court is entrusted with discretion in this area, and deference is to be accorded the Trial Judge's decision to declare a mistrial." *Id.* at 9, 394 N.E.2d at 1138, 420 N.Y.S.2d at 375.

50. 59 N.Y.2d 195, 200, 451 N.E.2d 176, 179, 464 N.Y.S.2d 418, 421 (1983) (stating that on review the court will hesitate to interfere with the lower court's discretion, but noted that this discretion is not without limits).

51. 22 U.S. 579 (1824). In *Perez*, the defendant was on trial for a capital offense. *Id.* The case was given to the jury to decide, but the jury was unable to reach a decision. *Id.* As a result, the trial court discharged the jury without obtaining the consent of the defendant. *Id.* The Court found that these actions would not preclude a future trial on the same offense and, accordingly, sent the case down to the trial court to be retried. *Id.* at 580.

52. 400 U.S. 470 (1971). The *Jorn* Court stated that "[r]eprosecution after a mistrial has unnecessarily been declared by the trial court obviously subjects the defendant to the same personal strain and insecurity regardless of the motivation underlying the trial judge's action." *Id.* at 483.

53. People v. Niccolich, 631 N.Y.S.2d 922, 923 (App. Div. 2d Dep't 1995) (quoting United States v. Perez, 22 U.S. 579, 580 (1824)).

54. *Niccolich*, 631 N.Y.S.2d at 923.

55. 410 U.S. 458 (1973). In *Somerville*, the Court stated that a defendant has a "valued right to have his trial completed by a particular tribunal." *Id.* at 466 (internal quotes omitted).

56. *Niccolich*, 631 N.Y.S.2d at 924.