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Criminal Law and Procedure - Mistake of Fact in Defense of Others - People v. Young, 11 N.Y.2d 274, 183 N.E.2d 319, 229 N.Y.S.2d 1 (1962)

DePaul College of Law

CRIMINAL LAW AND PROCEDURE–MISTAKE OF FACT IN DEFENSE OF OTHERS

Gerald Young, defendant, while making a delivery, observed two men struggling with a youth. The defendant ran immediately to the scene of the struggle to aid the youth whom he assumed was being unlawfully beaten. He attacked the men, causing one to fall and break his leg. Unknown to defendant, the two men were detectives lawfully arresting the youth; he made no inquiry to find out. The defendant was convicted of third degree assault. The conviction was reversed by the Appellate Division of the Supreme Court of New York. The Court of Appeals reversed the Appellate Division and upheld the conviction, holding that one who intervenes in a struggle between strangers, under a mistaken but reasonable belief that he is protecting another who he assumes is being unlawfully beaten, is criminally liable. *People v. Young*, 11 N.Y.2d 274, 183 N.E.2d 319, 229 N.Y.S.2d 1 (1962).

In this case of first impression in New York, the Court adopted the rule that one who comes to the aid of a third person does so at his own risk. The states are almost evenly divided on this question, and the courts weigh the factor of public policy and the requirement of *mens rea* in arriving at their decisions.

The courts which do not allow the defense argue that a state may eliminate the requirement of *mens rea* in these cases if the public welfare benefits. In *United States v. Balint*[1] the United States Supreme Court, in affirming the conviction of a defendant who unknowingly sold narcotics in violation of the law, held that the emphasis of the law is upon achievement of some social betterment rather than the punishment of the crime. Similarly, the Illinois Supreme Court, in *People v. Johnson*,[2] said that the principle of police regulation is "the greatest good to the greatest number."[3] This is the reasoning adopted in the *Young* case.

Most statutes which impose strict liability on the actor and make the commission of the criminal act alone a crime are based upon the power of the state to regulate for the public good.[4] In *Commonwealth v. Weiss*,[5]

[1] 258 U.S. 250 (1921).

[2] 288 Ill. 442, 123 N.E. 543 (1919). [3] *Id.* at 446, 123 N.E. at 545.

[4] Sayre, *Public Welfare Offenses*, 33 COLUM. L. REV. 55 (1933). Offenses not requiring *mens rea* fall roughly within the following groups:
(1) Illegal sales of intoxicating liquors
(2) Sales of impure or adulterated food or drugs
(3) Sales of misbranded articles
(4) Violations of anti-narcotic acts
(5) Criminal nuisances
(6) Violations of traffic regulations

where defendant violated the state law by unknowingly selling oleomargarine as butter, the Pennsylvania Supreme Court said it is for the legislature to determine whether the public injury threatened is so great as to justify an absolute and indiscriminate prohibition.

The state's actions to protect the public are based upon the seriousness of the crime, *e.g.*, anti-narcotic laws, selling adulterated foods, etc., or upon the evils that may arise if the act and the defense are allowed. A New Jersey court pointed out one such evil in *State v. Chiarello*,[6] where it was said that if the intervener should happen on the scene when the innocent victim of the assault had the upper hand, the innocent participant might be harmed by the actor who would reasonably believe he was the aggressor. Allowing the defense would cause the innocent victim to be harmed if appearances were against him. Another argument put forth is that law enforcement might be hampered by overzealous citizens, ignorant of the facts, who go to the aid of persons being arrested.[7] This is what occurred in the *Young* case.

Furthermore, it is argued that allowing the defense would enable the intervener to have greater rights than the one he defends, and this would be against the public policy as it enables the intervener to do what the defended person could not do.[8] In the *Young* case, for example, it would have allowed Young to strike the policemen when the youth he was defending could not have. As was said in the California case of *People v. Will*,[9] the intervener stands in the shoes of the defended person and has exactly the same privileges or lack of privileges as he does. This court felt that the right of a person to defend another ordinarily should not be greater than such person's right to defend himself.

This position is countered by those jurisdictions which hold that allowing the defense would benefit the society by enabling bystanders to aid those in distress—an act which will usually avoid a more serious injury and aid in the capture of the assailant. If bystanders can help, innocent

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(7) Violations of motor-vehicle laws
(8) Violations of general police regulations, passed for the safety, health, or well-being of the community
(9) Sex offenses committed against girls under the statutory age
(10) Adultery and bigamy

[5] 139 Pa. St. 247, 21 Atl. 10 (1891).

[6] 69 N.J. Super. 479, 174 A. 2d 506 (1961).

[7] See argument of the dissent in the Appellate Division holding of the Young case, 210 N.Y.S. 2d 358, 12 App. Div. 2d 262 (1961).

[8] Robinson v. City of Decatur, 32 Ala. App. 654, 29 So. 2d 429 (1947); Commonwealth v. Hounchell, 280 Ky. 217, 132 S.W. 2d 921 (1939).

[9] 79 Cal. App. 101, 248 Pac. 1078 (1926).

men will not be killed for lack of defenders. It can be seen that a law, passed to prevent intervention by prohibiting the mistake of fact defense, would be violated if someone dear to the actor was being beaten and the intervener came to his rescue.[10] It does not seem just that one should be convicted of a crime if he selflessly attempts to protect the victim of an apparently unjustified assault.[11]

Some courts argue that the right of an individual to act from appearances, when he has a reasonable belief as to the danger, outweighs the interest of society to convict such a person of assault or worse.[12] As Bishop, a well-known criminal writer, says:

> What is absolute truth no man ordinarily knows. All act from what appears, not from what is. If persons were to delay their steps until made sure, beyond every possibility of mistake, that they were right, earthly affairs would cease to move. . . . All, therefore, must, and constantly do, perform what else they would not, through mistake of facts. . . .[13]

The second factor used by courts in determining this problem is the necessity of the *mens rea* requirement for a criminal conviction. Those jurisdictions not allowing the defense follow the rationale laid down by the majority in the *Young* case, that is, it is sufficient for conviction if the defendant knowingly struck the blow. The defendant intended to commit the act of assault and this intent is all that is required for conviction.[14] This view is also supported on the basis of the police power of the state: it is reasoned that if the state deems that the act is against public policy, it is within the state's power to eliminate the need for any *mens rea* to obtain a conviction.[15]

In the *Young* case, a strong dissent presents a contrary argument, namely, that criminal intent requires awareness of actual wrongdoing. It is argued that basic to the imposition of criminal liability, both at common law and under our statutory law, is the existence in the one who committed the prohibited act of what has been variously termed a guilty mind, a *mens rea,* or a criminal intent. Therefore, if the intervener's act would be innocent provided the facts were what he believed them to be, he does

[10] 2 BURDICK, LAW OF CRIME 136–37 (1946).

[11] See State v. Chiarello, 69 N.J. Super. 479, 174 A. 2d 506 (1961).

[12] Reeves v. State, 153 Tex. Crim. 32, 217 S.W. 2d 19 (1949); Brannin v. State, 221 Ind. 123, 46 N.E. 2d 599 (1943); Little v. State, 61 Tex. Crim. 197, 135 S.W. 119 (1911).

[13] 1 BISHOP, CRIMINAL LAW 204 (9th ed. 1923).

[14] See also Pacheco v. People, 96 Colo. 401, 43 P. 2d 165 (1935); Lévitt, *Extent and Function of the Doctrine of "Mens Rea,"* 17 ILL. L. REV. 578 (1923).

[15] State v. Lindberg, 125 Wash. 51, 215 Pac. 41 (1923); State v. Quinn, 131 La. 490, 59 So. 913 (1912).

not have the criminal mind, and, therefore, cannot be convicted of the crime. Courts have repeatedly held that a person should not be convicted of a common law crime if he had no criminal intent.[16]

Illinois has adopted a stand, contrary to that of New York in the *Young* case, in its Criminal Code which provides that:

> A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another. . . .[17]

A reasonable belief then, notwithstanding the fact that it is later proved to be wrong, will justify the use of force. Illinois case law also allows the defense of reasonable mistake of fact. In *People v. Dugas*[18] defendant was convicted of assaulting one Obert who appeared to be viciously beating Mullins, defendant's friend. The Illinois Supreme Court, in reversing the conviction, held that the right to take life in defense against a felonious attack extends to the defense of others, whether relatives or strangers. Furthermore, it was a question of fact for the jury if defendant was reasonable in his belief that Obert was assaulting Mullins. This case also allows a reasonable belief, even if wrong, to serve as a defense. This is exactly the same contention as the dissenters argue in the *Young* case where it is said that the mistaken belief must be one which is reasonably entertained, and the question of reasonableness is for the trier of the facts.[19]

In conclusion, the *Young* case seems to represent a trend toward the gradual elimination of the mistake of fact doctrine in cases of defense of others where the intervenor could be convicted of serious crimes. However, the defense is accepted in homicide cases, *e.g.*, one can kill another whom he reasonably believes is about to commit a forcible felony, or he can kill to protect his habitation, etc., and he will not be convicted of murder.[20] If the defense is available for these acts, it seems logical also to allow it for lesser crimes. The rule adopted in the *Young* case is a step in the direction of convictions for serious offenses without any regard for the actor's motive or intent, a step which must be viewed as extremely questionable.

[16] State v. Chiarello, 69 N.J. Super. 479, 174 A. 2d 506 (1961); Williams v. State, 70 Ga. App. 10, 27 S.E. 2d 109 (1943); State v. Great Atl. & Pac. Tea Co. of America, 111 W.Va. 148, 161 S.E. 5 (1931); State v. Mounkes, 88 Kan. 193, 127 Pac. 637 (1912).

[17] ILL. REV. STAT. ch. 38, § 7-1 (1961).

[18] 310 Ill. 291, 141 N.E. 769 (1923).

[19] See also State v. Chiarello, 69 N.J. Super. 479, 174 A. 2d 506 (1961).

[20] Thomas v. State, 255 Ala. 632, 53 So. 2d 340 (1951); People v. Eastman, 405 Ill. 491, 91 N.E. 2d 387 (1950); Viliborghi v. State, 45 Ariz. 275, 43 P. 2d 210 (1935); State v. Hennessy, 29 Nev. 320, 90 Pac. 221 (1907).