

Wednesday, May 24, 2006

### **When court personnel and lawyers guffaw about scared criminal defendants.**

Because I believe in responding to distasteful speech with counterspeech, rather than with lawsuits, I do so here about the too many times that I see court personnel and lawyers guffawing unfairly over the misfortunes of scared criminal defendants. A world without laughter is certainly one I'd not be fond of. However, when a defendant is in court with his or her liberty on the line, that's no laughing matter, unless the court is willing to dismiss the charges in exchange. Sure, people often laugh to relieve their own tension and to escape their own fears; that does not justify making criminal defendants the butt of their jokes. Here is an experience that I do not wish to see repeated, for reasons going much further than the uncaring laughter that spurred the situation: A scared man who speaks only Spanish shows up for a crowded misdemeanor docket in Maryland District Court, accused of the non-jailable offense of possessing an open alcohol beverage container. (How in the world would Maryland be a safer state if it arrested and convicted everyone carrying an open beer can on the sidewalk or in a park? By the way, if you even wish to drive your favorite previously-opened cognac to share at a friend's home, you're violating the law if the bottle's in the car's passenger area. Md. Crim. Law Code Ann. Â§ 10-123). This man has no lawyer. He is not offered the option to come back another day with a lawyer. He's not told of the rights he gives up by pleading guilty (including that some judges or parole commissioners might treat a guilty here as a probation or parole violation, particularly if the man is on probation for drunk driving with a special condition not to drink liquor). He is only asked if he pleads guilty or not guilty (more fair would be to ask the reverse: "Do you plead not guilty/innocent or guilty"). He is scared. He does not know what to do. The court-hired Spanish interpreter is having a good time snickering over this man's not just admitting the accusation. The interpreter offers to help explain the situation to the defendant. (Persuade to plead guilty, sounds more like it). During a break later on, the interpreter and a criminal defense lawyer are having a good laugh about the situation -- being obvious to them that this man, in court alone, should plead guilty and get it over with for himself and for everyone else waiting for their cases to be called. IF the defendant's from Central or South America, there is a good chance that at one time or another, he has lived there when the courts were justifiably known to be seats of oppression, with some countries having judges who would dispense more justice depending on the size of the bribe. Well, wouldn't you know, when the man's case gets re-called, he enters a guilty plea, with the interpreter looking as proud as could be about his achievement. The judge finds him guilty, and orders a fine and court costs. Now, what would have happened if the gentleman had plead not guilty? That would be an assertion of his right to require the government to try to prove his guilt beyond a reasonable doubt. The prosecutor then would have had to present a witness or witnesses to show that they lawfully seized an open alcoholic beverage container from on or about the defendant's person, and that the defendant knowingly possessed that open container (with possession being defined as knowledge, dominion, and control). I would argue to the judge that a chemist would be needed to prove beyond a reasonable doubt that the bottle or can contained alcohol; as an example, unless the container is in a car's passenger area, I know of no law that prevents me from thoroughly washing and drying out a Bud bottle and drinking cola from it. If the defendant lost, he could still ask for a probation before judgment. He could appeal for a whole new trial in Circuit Court. Now, a trial, of course, would take the court's and prosecutors' time away from other cases. My point, exactly. The American criminal court system relies on guilty pleas. If every criminal defendant entered a plea of not guilty, the courts would grind to a halt, at least until the lawmakers got some sense finally to reduce the court dockets by legalizing marijuana, heavily decriminalizing all other drugs, eliminating mandatory minimum sentences, legalizing prostitution and gambling, expanding sensible diversion alternatives to receiving a guilty verdict, eliminating or reducing negative immigration consequences for convictions, letting people drink a cold one (but don't then drive) without fear of being hauled into court, and the list goes on. Fortunately, many of the court interpreters are very respectful to everyone. Their interpreting abilities vary widely from excellent to much less than that, however, particularly for languages other than Spanish, but that is a topic for a separate blog entry. If I did not speak up to this interpreter, who would? So I did. During a break, I greeted this interpreter, whom I have known for years. Rather than discussing the laughing, I focused on the consequences of the man's guilty plea for having an open beer container. I told the interpreter that these cases are winnable, as discussed above. And, if they're lost, what's the big deal, seeing that the maximum applicable fine is \$100. Md. Ann. Code art. 2B, Â§ 19-104 and 19-204. Therefore, there should be little to no incentive to plead guilty to such charges. If this man is not a United States citizen, this conviction can be added to any other alcohol-related convictions; enough alcohol convictions can lead to the immigration authorities concluding he is a habitual drunkard, which involves negative immigration consequences. So I digress from the title of this blog entry. Or do I? Absent the interpreter's laughter, everyone may have taken this case more seriously. The man may have entered a plea of innocent. He may have won; if so, I would have had the last laugh. By Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00