SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT

People v. Delacruz

2022 NY Slip Op 04641 (N.Y. Ct. App. 2022) · No. 2016-07058 · Decided July 20, 2022

SUMMARY

The Appellate Division, Second Department affirmed Pedro Delacruz's convictions for murder in the second degree and criminal possession of a weapon in the second degree. The court held that the evidence was legally sufficient and not against the weight of the evidence, upheld admission of the decedent's statements as excited utterances and relevant prior misconduct, and found the remaining constitutional claims unpreserved or meritless.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Per Curiam; Francesca E. Connolly, J.P.; Joseph J. Maltese, J.; Paul Wooten, J.; Lara J. Genovesi, J.
JURISDICTION	New York
DECIDED	July 20, 2022
DOCKET	2016-07058
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of the Supreme Court, Westchester County, entered after a jury convicted him of murder in the second degree and criminal possession of a weapon in the second degree and the court imposed sentence.
STANDARD OF REVIEW	For legal sufficiency, the court viewed the evidence in the light most favorable to the prosecution and asked whether it established guilt beyond a reasonable doubt. For weight of the evidence, the court independently reviewed the record while according great deference to the jury's opportunity to observe the witnesses and hear the testimony. Admission of hearsay as an excited utterance was reviewed as an evidentiary decision committed to the sound judgment of the trial court. Unpreserved claims were not reviewable under CPL 470.05(2).
PRECEDENTIAL VALUE	Published New York Appellate Division decision

PARTIES	Pedro Delacruz v. The People of the State of New York

TOPICS

evidence · hearsay · appellate procedure · preservation of error · reasonable doubt

PRACTICE AREAS

criminal law · criminal procedure · evidence

QUESTIONS PRESENTED

1. Whether the evidence was legally sufficient to support the convictions for murder in the second degree and criminal possession of a weapon in the second degree.
2. Whether the verdict was against the weight of the evidence.
3. Whether the decedent's statements to his girlfriend were properly admitted under the excited-utterance exception to the hearsay rule.
4. Whether the testimony was improperly admitted as evidence of an uncharged crime or prior bad act under People v. Molineux.
5. Whether the defendant's confrontation and due-process claims warranted reversal despite the lack of preservation.

HOLDINGS

1. The legal-sufficiency challenge was unpreserved because the defendant failed to make the required specific motion at trial; in any event, the evidence was legally sufficient to establish guilt of murder in the second degree and criminal possession of a weapon in the second degree beyond a reasonable doubt.
2. The verdict was not against the weight of the evidence.
3. The trial court properly admitted the decedent's statements as excited utterances because the statements were made while the decedent remained under the stress of excitement caused by the chase.
4. The defendant's Molineux challenge was unpreserved because he did not raise that specific objection below; alternatively, the testimony was properly admitted because it provided necessary background and was probative of intent and motive, with its probative value outweighing any potential prejudice.
5. The defendant's confrontation and due-process claims were unpreserved for appellate review and, in any event, were without merit.

KEY QUOTATIONS

> *"In any event, viewing the evidence in the light most favorable to the prosecution (see People v Contes, 60 NY2d 620, 621), we find that it was legally sufficient to establish the defendant's guilt of murder in the second degree and criminal possession of a weapon in the second degree beyond a reasonable doubt."* (2022 NY Slip Op 04641, at *1)

> *“Moreover, in fulfilling our responsibility to conduct an independent review of the weight of the evidence (see CPL 470.15[5]; People v Danielson, 9 NY3d 342, 348), we nevertheless accord great deference to the jury's opportunity to view the witnesses, hear the testimony, and observe demeanor”* (2022 NY Slip Op 04641, at *1)

> *“The Supreme Court thus properly admitted the testimony under the excited utterance exception since the record demonstrates that the decedent made the statements while he was "still under the stress of excitement" of the chase”* (2022 NY Slip Op 04641, at *2)

> *“If the evidence has substantial probative value and is directly relevant to the purpose—other than to show criminal propensity—for which it is offered, the probative value of the evidence outweighs the danger of prejudice and the court may admit the evidence”* (2022 NY Slip Op 04641, at *2)

FACTUAL BACKGROUND

The decedent's girlfriend testified that, during a telephone call a few days before the decedent's death, the decedent sounded out of breath and said that he had been chased. He also stated that the defendant had chased him with a gun and a knife. The trial court admitted the testimony under the excited-utterance exception to the hearsay rule and as evidence relevant to the relationship between the parties, the defendant's intent, and his motive.

PROCEDURAL HISTORY

The Supreme Court, Westchester County, admitted testimony from the decedent's girlfriend concerning statements the decedent made during a telephone call shortly before his death. A jury convicted Delacruz of murder in the second degree and criminal possession of a weapon in the second degree, and the trial court entered judgment on May 24, 2016. The Appellate Division affirmed, concluding that the sufficiency, weight-of-the-evidence, hearsay, Molineux, confrontation, and due-process claims either were unpreserved or lacked merit.

DISPOSITION

affirmed

CASES CITED

- People v. Hawkins, 11 NY3d 484, 492
- People v. Contes, 60 NY2d 620, 621
- People v. Danielson, 9 NY3d 342, 348
- People v. Mateo, 2 NY3d 383, 410
- People v. Bleakley, 69 NY2d 490, 495
- People v. Romero, 7 NY3d 633
- People v. Morris, 189 AD3d 1077, 1079
- People v. Cummings, 31 NY3d 204, 208-209
- People v. Hernandez, 28 NY2d 1056, 1057

- People v. Edwards, 47 NY2d 493, 498
- People v. Ortiz, 198 AD3d 924, 927
- People v. Nalty, 160 AD2d 958, 959
- People v. Molineux, 168 NY 264, 293
- People v. Murray, 155 AD3d 1106, 1111
- People v. Cass, 18 NY3d 553, 559-560
- People v. Alvino, 71 NY2d 233, 241
- People v. Allweiss, 48 NY2d 40, 46-47
- People v. Morris, 21 NY3d 588, 594
- People v. Morales, 189 AD3d 1464, 1467
- People v. Dorm, 12 NY3d 16, 19
- People v. Bradford, 118 AD3d 1254, 1256
- People v. Williams, 27 AD3d 673, 673
- People v. Johnson, 213 AD2d 675, 676
- People v. Tavarez, 155 AD3d 783, 787
- People v. Castello, 176 AD3d 730, 733

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