

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

People v. Petrizzo

2020 NY Slip Op 03251 (N.Y. Ct. App. 2020) · No. 2016-03984 · Decided June 10, 2020

SUMMARY

The Appellate Division, Second Department reversed Aaron Petrizzo's conviction for resisting arrest because the trial court failed to comply with Criminal Procedure Law § 310.30 and the procedures governing jury notes. The court dismissed the indictment in the interest of justice and remitted the matter to the Supreme Court, Kings County, for proceedings concerning record sealing.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	John M. Leventhal, J.P.; Joseph J. Maltese, J.; Colleen D. Duffy, J.; Linda Christopher, J.
JURISDICTION	New York
DECIDED	June 10, 2020
DOCKET	2016-03984
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed from a Kings County Supreme Court judgment convicting him of resisting arrest after a jury trial and imposing sentence.
STANDARD OF REVIEW	Independent review of the weight of the evidence under CPL 470.15(5), while according great deference to the jury's opportunity to observe the witnesses. Compliance with CPL 310.30 was reviewed under the mode-of-proceedings-error standard, for which preservation is not required when the trial court fails to provide meaningful notice of a substantive jury note.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion; precedential within the applicable New York court system.
PARTIES	Aaron Petrizzo v. The People of the State of New York

TOPICS

criminal procedure

appellate procedure

preservation of error

standard of review

PRACTICE AREAS

criminal procedure

appellate practice

QUESTIONS PRESENTED

1. Whether the conviction for resisting arrest was against the weight of the evidence.
2. Whether the trial court violated CPL 310.30 by failing to provide meaningful notice to counsel and a meaningful response concerning substantive jury notes.
3. Whether the CPL 310.30 errors constituted mode-of-proceedings errors requiring reversal without preservation.
4. Whether dismissal of the indictment was appropriate after reversal where the defendant had been acquitted of the two most serious charges and had served the misdemeanor sentence.

HOLDINGS

1. The conviction was not against the weight of the evidence because the jury was entitled to accept or reject portions of the prosecution witnesses' testimony.
2. Under CPL 310.30, the trial court must provide counsel with meaningful notice of the content of a substantive jury note and must provide a meaningful response to the jury.
3. The trial court's failure to provide meaningful notice of the substantive jury notes constituted mode-of-proceedings errors, making preservation unnecessary and requiring reversal.
4. Dismissal of the indictment was appropriate in the exercise of the court's interest-of-justice jurisdiction because the defendant had been acquitted of the two most serious charges and had already served the sentence for the misdemeanor conviction.

KEY QUOTATIONS

*“Criminal Procedure Law § 310.30 imposes two responsibilities on trial courts upon receipt of a substantive note from a deliberating jury: the court must provide counsel with meaningful notice of the content of the note, and the court must provide a meaningful response to the jury” (at *1)*

*“In the absence of record proof that the trial court complied with its core responsibilities under CPL 310.30, a mode of proceedings error occur[s] requiring reversal” (at *1)*

FACTUAL BACKGROUND

A jury convicted Aaron Petrizzo of resisting arrest but acquitted him of two more serious charges. During deliberations, the jury submitted a note asking about the elements of resisting arrest and another note seeking clarification about portions of witness testimony. The trial court misread the first note by substituting "initially" for "intentionally," did not show the note to the parties as reflected in the record, and did not read or disclose the second note to the parties.

PROCEDURAL HISTORY

The defendant was convicted of resisting arrest by a jury in the Supreme Court, Kings County, after being acquitted of two more serious charges. The Appellate Division found that the trial court failed to comply with Criminal Procedure Law § 310.30 in handling substantive jury notes, reversed the conviction, dismissed the indictment in the interest of justice, and remitted the matter for proceedings concerning record sealing under CPL § 160.50.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The indictment was dismissed, and the matter was remitted to the Supreme Court, Kings County, for further proceedings consistent with CPL § 160.50, including a determination whether the record should be sealed.

CASES CITED

- People v. Mateo, 2 N.Y.3d 383, 410
- People v. Bleakley, 69 N.Y.2d 490, 495
- People v. Huger, 136 A.D.3d 943, 944
- People v. Mazyck, 118 A.D.3d 728, 729
- People v. O'Rama, 78 N.Y.2d 270, 276-277, 279
- People v. Mack, 27 N.Y.3d 534, 536, 538
- People v. Tabb, 13 N.Y.3d 852, 853
- People v. Walston, 23 N.Y.3d 986, 990
- People v. Flynn, 79 N.Y.2d 879, 882
- People v. Bailey, 164 A.D.3d 815, 819

OPINION

PER CURIAM.

People v Petrizzo (2020 NY Slip Op 03251) People v Petrizzo 2020 NY Slip Op 03251 Decided on June 10, 2020 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on June 10, 2020 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department JOHN M. LEVENTHAL, J.P.

JOSEPH J. MALTESE COLLEEN D. DUFFY LINDA CHRISTOPHER, JJ. 2016-03984 (Ind. No. 4919/15) [*1]The People of the State of New York, respondent, vAaron Petrizzo, appellant. Paul Skip Laisure, New York, NY (Samuel R. Feldman of counsel), for appellant. Eric Gonzalez,

District Attorney, Brooklyn, NY (Leonard Joblove and Avshalom Yotam of counsel), for respondent.

DECISION & ORDER Appeal by the defendant from a judgment of the Supreme Court, Kings County (Bruce M. Balter, J.), rendered April 7, 2016, convicting him of resisting arrest, upon a jury verdict, and imposing sentence. ORDERED that the judgment is reversed, on the law and as a matter of discretion in the interest of justice, the indictment is dismissed, and the matter is remitted to the Supreme Court, Kings County, for further proceedings consistent with CPL § 160.50, including a determination of whether the record should be sealed.

In fulfilling our responsibility to conduct an independent review of the weight of the evidence (see CPL 470.15[5]), we nevertheless accord great deference to the jury's opportunity to view the witnesses, hear the testimony, and observe their demeanor (see *People v Mateo*, 2 NY3d 383, 410; *People v Bleakley*, 69 NY2d 490, 495). Upon reviewing the record here, we are satisfied that the verdict finding the defendant guilty of resisting arrest was not against the weight of the evidence.

Although the jury acquitted the defendant on two of the charged counts, the jury was not required to disregard the testimony of the prosecution's witnesses in full, since it was free to "accept or reject portions of the testimony presented to it" (*People v Huger*, 136 AD3d 943, 944 [internal quotation marks omitted]; see *People v Mazyck*, 118 AD3d 728, 729).

However, as the People concede, the defendant's conviction must be vacated as a result of the Supreme Court's failure to comply with CPL 310.30, in accordance with the procedures set forth in *People v O'Rama* (78 NY2d 270) for the handling of jury notes. "Criminal Procedure Law § 310.30 imposes two responsibilities on trial courts upon receipt of a substantive note from a deliberating jury: the court must provide counsel with meaningful notice of the content of the note, and the court must provide a meaningful response to the jury" (*People v Mack*, 27 NY3d 534, 536; see *People v O'Rama*, 78 NY2d at 276-277).

A trial court's failure to provide meaningful notice to counsel falls within the narrow class of mode of proceedings errors for which preservation is not required (see *People v Mack*, 27 NY3d at 536; *People v O'Rama*, 78 NY2d at 279).

Moreover, "[i]n the absence of record proof that the trial court complied with its core responsibilities under CPL 310.30, a mode of proceedings error occur[s] requiring reversal" (*People v Tabb*, 13 NY3d 852, 853; see *People v Mack*, 27 NY3d at 538).

Here, in a note marked as court exhibit 8, the jury posited a question about the elements of resisting arrest. When reading that note into the record, the Supreme Court substituted the word "initially" in place of the word "intentionally," forming a substantively different question than that posed by the jury.

The court again substituted the word "initially" in place of the word "intentionally" when it read the note aloud later in the proceedings. Since there is no indication in the record that court exhibit 8 was shown to the parties, the court's erroneous use of a substantively different word than that used by the jury when it read the note into the record, and its repetition of that same error later in the proceedings, constituted mode of proceedings errors.

In addition, although the jury submitted to the court a note marked as court exhibit 10 to clarify which portions of the testimony of certain witnesses the jury wished to have read back, the court did not read court exhibit 10 into the record at any point, and the record does not show that the court ever informed the parties that this note had been received.

As a result of the errors regarding these jury notes, we must reverse the defendant's conviction of resisting arrest (see *People v Mack*, 27 NY3d at 538; *People v Walston*, 23 NY3d 986, 990). In light of the foregoing, we need not reach the defendant's remaining contentions. Since the defendant was acquitted of the two most serious charges in the indictment and has already served the sentence imposed on his conviction of the misdemeanor, under the circumstances of this case and in the exercise of our interest of justice jurisdiction, dismissal of the indictment is appropriate (see *People v Flynn*, 79 NY2d 879, 882; *People v Bailey*, 164 AD3d 815, 819).

The matter is remitted to the Supreme Court, Kings County, for further proceedings consistent with CPL § 160.50, including a determination of whether the record should be sealed. LEVENTHAL, J.P., MALTESE, DUFFY and CHRISTOPHER, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court