

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

People v. Nellis

2023 NY Slip Op 03046 (App. Div. 2023) · No. 112665, 113346 · Decided June 8, 2023

SUMMARY

The New York Appellate Division, Third Department reversed Daniel A. Nellis's convictions for second-degree murder and weapons offenses and remitted for further proceedings. The court held that repeated prosecutorial misconduct, including improper propensity evidence and summation comments, substantially prejudiced the defendant, particularly because the trial court failed to intervene or provide corrective instructions. The appeal from the denial of the defendant's CPL article 440 motion was dismissed as academic.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Ceresia, J.; Lynch, J.P.; Clark, J.; Pritzker, J.
JURISDICTION	New York
DECIDED	June 8, 2023
DOCKET	112665, 113346
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed from a judgment of the County Court of Fulton County entered after a jury convicted him of second-degree murder and weapons offenses, and, by permission, appealed from an order denying his CPL article 440.10 motion to vacate the judgment without a hearing.
STANDARD OF REVIEW	For weight of the evidence, the court viewed the evidence in a neutral light, first considered whether a different verdict would have been unreasonable, and then weighed the relative probative force of conflicting testimony and inferences while deferring to the jury's credibility determinations. Prosecutorial misconduct warranted reversal when its severity and frequency, the trial court's response, and the strength of the evidence demonstrated substantial prejudice and a denial of due process. Unpreserved errors were reviewed in the interest of justice under CPL 470.15(6)(a).

PRECEDENTIAL VALUE

published New York Appellate Division opinion

PARTIES

Daniel A. Nellis Sr. v. The People of the State of New York

TOPICS

prosecutorial misconduct

criminal procedure

appellate procedure

evidence

preservation of error

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

QUESTIONS PRESENTED

1. Whether the murder and first-degree weapon-possession convictions were supported by legally sufficient evidence and were against the weight of the evidence.
2. Whether the prosecutor committed prejudicial misconduct by introducing uncharged prior-bad-act evidence, using propensity-based cross-examination, and making improper summation comments.
3. Whether the trial court's failure to intervene or provide curative instructions compounded the prosecutorial misconduct and deprived defendant of due process.
4. Whether unpreserved prosecutorial errors should be reviewed in the interest of justice.
5. Whether defendant's CPL article 440.10 appeal remained justiciable after reversal of the judgment of conviction.

HOLDINGS

1. The verdict was supported by the weight of the evidence. Although a different verdict would not have been unreasonable, the evidence, viewed neutrally and with deference to the jury's credibility determinations, supported defendant's intentional killing of the victim and constructive possession of at least 11 operable firearms.
2. The prosecutor's repeated introduction of prior-bad-act evidence outside the scope of the court's Sandoval/Molineux ruling, and the prosecutor's use of that evidence to suggest defendant's violent propensity rather than merely impeach credibility, constituted plainly improper misconduct.
3. The prosecutorial misconduct, compounded by County Court's failure to intervene, strike improper testimony, or give cautionary instructions, caused substantial prejudice and deprived defendant of due process, requiring reversal and a new trial.
4. Despite the absence of defense objections to several serious errors, the court exercised its interest-of-justice authority to review the errors under CPL 470.15(6)(a) because of their magnitude and frequency.

KEY QUOTATIONS

*“reversal based on prosecutorial misconduct is warranted if the misconduct is such that the defendant suffered substantial prejudice, resulting in a denial of due process” ([*4])*

*“The above-referenced questions by the prosecutor — some of which focused on matters outside of County Court’s Sandoval/Molineux ruling — were plainly improper, bearing, as they did, not upon defendant’s credibility or veracity but upon his criminal propensity” ([*5])*

*“we conclude that the misconduct of the prosecutor, as exacerbated by County Court’s inaction, caused defendant to suffer substantial prejudice, the result of which was the deprivation of due process” ([*7])*

FACTUAL BACKGROUND

The victim disappeared after leaving work shortly after midnight on September 25, 2018, and her body was found approximately one week later with a close-range gunshot wound to the head. Evidence placed defendant and the victim together, showed defendant’s vehicle and cell phone traveling toward the location where the body was found, and included the victim’s elevated Fitbit heart rate, defendant’s DNA on the victim’s body and clothing, and scratches on defendant. Police also found more than 100 guns in a vacant apartment that defendant had controlled or accessed, including 11 operable firearms. At trial, defendant admitted being with the victim and firing a warning shot but denied killing her or possessing the guns.

PROCEDURAL HISTORY

After a jury trial, County Court convicted defendant of second-degree murder, two counts of third-degree criminal possession of a weapon, and first-degree criminal possession of a weapon. The court sentenced defendant to 25 years to life for murder, concurrent lesser terms for the third-degree weapon convictions, and a consecutive 15-year term plus 5 years of postrelease supervision for first-degree weapon possession. County Court later denied defendant’s motion to vacate the convictions based on newly discovered evidence and ineffective assistance of counsel. The Appellate Division found the evidence legally and factually sufficient under its weight-of-the-evidence review but reversed because pervasive prosecutorial misconduct, compounded by the trial court’s failure to intervene, caused substantial prejudice and denied defendant due process; the CPL article 440 appeal was dismissed as academic.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgment of conviction was reversed on the law and the matter was remitted to County Court of Fulton County for further proceedings not inconsistent with the decision. The appeal from the CPL article 440.10 order was dismissed as academic.

CASES CITED

- People v. Truitt, 213 AD3d 1145, 1146, 1149 [3d Dept 2023], lv denied 39 NY3d 1144 [2023]
- People v. Ashe, 208 AD3d 1500, 1501 [3d Dept 2022], lv denied 39 NY3d 961 [2022]
- People v. Montford, 207 AD3d 811, 812 [3d Dept 2022], lv denied 39 NY3d 941 [2022]
- People v. Sostre, 172 AD3d 1623, 1625 [3d Dept 2019], lv denied 34 NY3d 938 [2019]

- People v. Meadows, 183 AD3d 1016, 1019-1020 [3d Dept 2020], lv denied 35 NY3d 1047 [2020]
- People v. Slocum, 178 AD3d 1131, 1134 [3d Dept 2019], lv denied 35 NY3d 944 [2020]
- People v. Primakov, 105 AD3d 1397, 1398 [4th Dept 2013], lv denied 21 NY3d 1045 [2013]
- People v. McCoy, 169 AD3d 1260, 1264 [3d Dept 2019], lv denied 33 NY3d 1033 [2019]
- People v. Almenteros, 214 AD3d 1027, 1030 [3d Dept 2023]
- People v. Green, 208 AD3d 1539, 1546 [3d Dept 2022]
- People v. Gertz, 204 AD3d 1166, 1171 [3d Dept 2022], lv denied 38 NY3d 1070 [2022]
- People v. Ventimiglia, 52 NY2d 350, 362 [1981]
- People v. Nicholas, 130 AD3d 1314, 1317 [3d Dept 2015]
- People v. Wlasiuk, 32 AD3d 674, 678 [3d Dept 2006], lv dismissed 7 NY3d 871 [2006]
- People v. Sandoval, 34 NY2d 371, 375-377 [1974]
- People v. Anderson, 83 AD3d 854, 855-856 [2d Dept 2011]
- People v. Lindsey, 75 AD3d 906, 908 [3d Dept 2010], lv denied 15 NY3d 922 [2010]
- People v. Westerling, 48 AD3d 965, 968 [3d Dept 2008]
- People v. King, 115 AD3d 873, 875 [2d Dept 2014]
- People v. Wilhelm, 34 AD3d 40, 54-55 [3d Dept 2006]
- People v. Brown, 26 AD3d 392, 393 [2d Dept 2006]
- People v. Jones, 134 AD3d 1588, 1589 [4th Dept 2015]
- People v. De Vito, 21 AD3d 696, 699-700 [3d Dept 2005]
- People v. Porter, 136 AD3d 1344, 1346 [4th Dept 2016]