

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

People v. Ablakatov

2021 N.Y. Slip Op. 03285 (App. Div. 2021) · No. Appeal No. 13900; Case No. 2014-1187; Ind. No. 5756/12 ·
Decided May 25, 2021

SUMMARY

The Appellate Division, First Department unanimously affirmed the defendant's convictions for two counts of second-degree robbery and concurrent five-year sentences. The court rejected challenges to the weight of the evidence, the physical-injury element, jury credibility determinations, and the trial court's Sandoval ruling.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Renwick, J.P.; Webber, J.; González, J.; Scarpulla, J.
JURISDICTION	New York
DECIDED	May 25, 2021
DOCKET	Appeal No. 13900; Case No. 2014-1187; Ind. No. 5756/12
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of the Supreme Court, New York County, entered after a jury trial that convicted him of two counts of robbery in the second degree and imposed concurrent five-year sentences.
STANDARD OF REVIEW	The court reviewed whether the verdict was against the weight of the evidence, reviewed the preserved Sandoval challenge for abuse of discretion, and declined to review the unpreserved portion in the interest of justice.
PRECEDENTIAL VALUE	published
PARTIES	Alo L. Ablakatov v. The People of the State of New York

TOPICS

- criminal procedure
- evidence
- impeachment
- preservation of error
- appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

evidence

QUESTIONS PRESENTED

1. Whether the verdicts convicting defendant of two counts of robbery in the second degree were against the weight of the evidence.
2. Whether the evidence supported the physical-injury element of one robbery conviction.
3. Whether the trial court's Sandoval ruling was an abuse of discretion.
4. Whether the court's failure to consider that defendant's felony conviction was pending appeal required reversal or violated his right against self-incrimination.

HOLDINGS

1. The verdict was not against the weight of the evidence.
2. Defendant's challenge to the physical-injury element of one robbery conviction was unavailing.
3. The preserved portion of defendant's Sandoval claim did not warrant relief because the trial court balanced the appropriate factors and acted within its discretion.
4. The unpreserved portion of defendant's Sandoval claim was not reviewed in the interest of justice and, alternatively, was unavailing on the merits.

KEY QUOTATIONS

“The court was never alerted to the fact that defendant's felony conviction was pending on appeal.” ([*1])

“In any event, there was no risk that the ruling would violate defendant's right against self-incrimination” ([*1])

FACTUAL BACKGROUND

After a jury trial, defendant was convicted of two counts of robbery in the second degree. The evidence included the victim's testimony describing painful injuries to the rib area and hand, corroborating evidence, and the jury's credibility determinations. The trial court permitted the prosecutor to ask defendant only whether he had been convicted of a felony, while precluding inquiry into the underlying facts of that conviction.

PROCEDURAL HISTORY

The Supreme Court, New York County, rendered judgment on July 31, 2013, later amended on December 6, 2017, and March 7, 2018. Defendant appealed, challenging the weight and sufficiency-related aspects of the robbery convictions, the physical-injury element, and the court's Sandoval ruling. The Appellate Division unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Danielson, 9 N.Y.3d 342, 348-349 (2007)
- People v. Chiddick, 8 N.Y.3d 445, 447 (2007)
- People v. Guidice, 83 N.Y.2d 630, 636 (1994)
- People v. Hayes, 97 N.Y.2d 203 (2002)
- People v. Walker, 83 N.Y.2d 455, 458-459 (1994)
- People v. Cantave, 21 N.Y.3d 374, 381 (2013)

OPINION

PER CURIAM.

People v Ablakatov (2021 NY Slip Op 03285) People v Ablakatov 2021 NY Slip Op 03285 Decided on May 25, 2021 Appellate Division, First 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 and Entered: May 25, 2021 Before: Renwick, J.P., Webber, González, Scarpulla, JJ. Ind No. 5756/12 5756/12 Appeal No. 13900 Case No. 2014-1187 [*1]The People of the State of New York, Respondent, vAlo L. Ablakatov, Defendant-Appellant.

Caprice R. Jenerson, Office of the Appellate Defender, New York (Margaret E. Knight of counsel), for appellant. Cyrus R. Vance, Jr., District Attorney, New York (Sheila L. Bautista of counsel), for respondent. Judgment, Supreme Court, New York County (Maxwell Wiley, J.), rendered July 31, 2013, as amended December 6, 2017 and March 7, 2018, convicting defendant, after a jury trial, of two counts of robbery in the second degree, and sentencing him to concurrent terms of five years, unanimously affirmed.

The verdict was not against the weight of the evidence (see People v Danielson, 9 NY3d 342, 348-349 [2007]). Defendant's arguments concerning the physical injury element of one of his robbery convictions are unavailing (see generally People v Chiddick, 8 NY3d 445, 447 [2007]). There is no basis for disturbing the jury's credibility determinations regarding the victim's account of his painful injuries to his rib area and hand (see People v Guidice, 83 NY2d 630, 636 [1994]).

Furthermore, the victim's testimony was corroborated by other evidence. Defendant preserved a Sandoval claim only to the extent that the court's ruling differed from the compromise ruling expressly requested by defense counsel.

The court's Sandoval ruling balanced the appropriate factors and was a provident exercise of discretion (see People v Hayes, 97 NY2d 203 [2002]; People v Walker, 83 NY2d 455, 458-459

[1994]). We decline to review the unpreserved portion of defendant's Sandoval claim in the interest of justice.

As an alternative holding, we find it unavailing. The court was never alerted to the fact that defendant's felony conviction was pending on appeal. In any event, there was no risk that the ruling would violate defendant's right against self-incrimination (see *People v Cantave*, 21 NY3d 374, 381 [2013]), because the court precluded cross-examination about the underlying facts and only permitted the prosecutor to ask if defendant had been convicted of a felony. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: May 25, 2021