

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

People v. Rottela

2021 NY Slip Op 03337 (N.Y. Ct. App. 2021) · No. 2019-09185 · Decided May 26, 2021

SUMMARY

The Appellate Division, Second Department, affirmed Jesus Rottela's convictions for eight counts of possessing a sexual performance by a child. The court held that statements identifying the room where Rottela resided should have been suppressed, but found the error harmless beyond a reasonable doubt; it also rejected or declined to reach the defendant's other claims concerning sufficiency, weight of the evidence, and ineffective assistance of counsel.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Sylvia O. Hinds-Radix, J.; Colleen D. Duffy, J.; Angela G. Iannacci, J.
JURISDICTION	New York
DECIDED	May 26, 2021
DOCKET	2019-09185
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from a County Court judgment convicting the defendant after a nonjury trial of eight counts of possessing a sexual performance by a child. The appeal also reviewed the denial, after a suppression hearing, of the branch of the defendant's omnibus motion seeking suppression of statements.
STANDARD OF REVIEW	For harmlessness, whether there was no reasonable possibility that the evidentiary error contributed to the convictions. Legal sufficiency was reviewed, although the claim was unpreserved, by viewing the evidence in the light most favorable to the prosecution and determining whether it established guilt beyond a reasonable doubt. Weight of the evidence was reviewed independently, with great deference to the factfinder's opportunity to observe the witnesses and hear the testimony. The mixed ineffective-assistance claim was not

	reviewable on direct appeal because it required consideration of matters outside the record.
PRECEDENTIAL VALUE	Published opinion; precedential value under New York appellate practice is not otherwise specified in the text.
PARTIES	Jesus Rottela v. The People of the State of New York

TOPICS

suppression of evidence harmless error preservation of error ineffective assistance appellate procedure

PRACTICE AREAS

criminal procedure criminal evidence appellate procedure ineffective assistance of counsel

QUESTIONS PRESENTED

1. Whether statements identifying the first-floor room in which the defendant resided constituted pedigree information that was not subject to suppression.
2. If the statements were improperly admitted, whether their admission was harmless beyond a reasonable doubt.
3. Whether the defendant's legal-sufficiency challenge was preserved and, if considered, whether the evidence was legally sufficient to support all eight convictions.
4. Whether the verdict was against the weight of the evidence.
5. Whether the defendant's mixed ineffective-assistance-of-counsel claim could be resolved on direct appeal.
6. Whether the defendant's request to reopen the suppression hearing remained justiciable after the harmless-error determination.

HOLDINGS

1. The People failed to establish that the information in the defendant's statements identifying the room in which he resided constituted pedigree information under the circumstances, so the County Court erred in denying suppression.
2. The error in admitting the defendant's statements was harmless beyond a reasonable doubt because overwhelming evidence established that he resided in the first-floor room and used the computers recovered there, and there was no reasonable possibility that the error contributed to the convictions.
3. The defendant's contention that the suppression hearing should have been reopened was academic in light of the harmless-error determination.
4. The legal-sufficiency challenge was unpreserved for appellate review; in any event, the evidence was legally sufficient to establish beyond a reasonable doubt that the defendant committed all eight counts.
5. The verdict was not against the weight of the evidence.

6. The court declined to review the defendant's ineffective-assistance claim on direct appeal because it depended in part on matters outside the record; a CPL 440.10 proceeding was the appropriate forum for reviewing the claim in its entirety.

KEY QUOTATIONS

“However, the error was harmless beyond a reasonable doubt, as there was overwhelming evidence establishing that the defendant resided in the first-floor room and that he used the computers recovered therein.” (at 1)

“Since the defendant's claim of ineffective assistance of counsel cannot be resolved without reference to matter outside the record, a CPL 440.10 proceeding would be the appropriate forum for reviewing the claim in its entirety, and we decline to review the claim on this direct appeal.” (at 2)

FACTUAL BACKGROUND

During execution of a search warrant at residential property occupied by the defendant and another person, the defendant told law enforcement officials that a first-floor room was the room in which he resided. Two computers recovered from that room contained images of child pornography. After a nonjury trial, the defendant was convicted of eight counts of possessing a sexual performance by a child.

PROCEDURAL HISTORY

The Orange County Court denied suppression of statements made during execution of a search warrant, convicted the defendant after a nonjury trial, and imposed sentence on July 17, 2019. The defendant appealed. The Appellate Division held that the statements were improperly admitted, but affirmed because the error was harmless beyond a reasonable doubt; it also declined to review the mixed ineffective-assistance claim on direct appeal.

DISPOSITION

affirmed

CASES CITED

- People v. Rodney, 85 N.Y.2d 289, 292-294
- People v. Crawford, 163 A.D.3d 986, 987
- People v. Buza, 144 A.D.3d 1495, 1497
- People v. Crimmins, 36 N.Y.2d 230, 237
- People v. Hiraeta, 117 A.D.3d 964, 964-965
- People v. Webster, 153 A.D.3d 733, 733
- People v. Brown, 240 A.D.2d 587, 587-588
- People v. Contes, 60 N.Y.2d 620, 621
- People v. Kent, 19 N.Y.3d 290, 304

- People v. Henry, 166 A.D.3d 1289, 1290
- People v. Danielson, 9 N.Y.3d 342
- People v. Mateo, 2 N.Y.3d 383, 410
- People v. Bleakley, 69 N.Y.2d 490, 495
- People v. Romero, 7 N.Y.3d 633, 644-645
- People v. Maxwell, 89 A.D.3d 1108, 1109
- People v. Evans, 16 N.Y.3d 571, 575 n. 2
- People v. Freeman, 93 A.D.3d 805, 806

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