

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

People v. Delisme

2022 NY Slip Op 05130 (App. Div. 2022) · No. Appeal No. 16186; Case No. 2019-04131; Ind. No. 3847/18 ·
Decided September 6, 2022

SUMMARY

The Appellate Division, First Department reversed Bertrand Delisme's assault conviction and remanded for a new trial. The court held that the trial court should have instructed the jury as a matter of law that a shared bathroom accessible only from the defendant's and complainant's rooms constituted part of the defendant's dwelling, eliminating the duty to retreat under Penal Law § 35.15(2)(a)(i). Two justices dissented, concluding that any instructional error was harmless because the evidence overwhelmingly disproved justification.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Manzanet-Daniels, J.P.; Webber, J.; Gesmer, J.; Scarpulla, J.; Shulman, J.
JURISDICTION	New York
DECIDED	September 6, 2022
DOCKET	Appeal No. 16186; Case No. 2019-04131; Ind. No. 3847/18
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed from a judgment of Supreme Court, New York County, entered after a jury trial convicting him of assault in the second degree and sentencing him as a second felony offender.
STANDARD OF REVIEW	The court reviewed the challenged jury instruction for whether, viewed in its entirety, it conveyed the appropriate legal standard without possible confusion, and reviewed the instructional error for harmlessness under New York law.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion; majority opinion reversing conviction and ordering a new trial, with two judges dissenting.

TOPICS

self defense

jury instructions

criminal procedure

harmless error

statutory interpretation

PRACTICE AREAS

criminal law

criminal procedure

jury instructions

justification and self-defense

QUESTIONS PRESENTED

1. Whether a bathroom shared by defendant and the complainant, accessible only from their respective rooms and not routinely accessible to strangers, constituted part of defendant's dwelling under Penal Law § 35.15(2)(a)(i).
2. Whether the trial court erred by failing to instruct the jury that defendant had no duty to retreat from the shared bathroom as a matter of law.
3. Whether the erroneous justification instruction was harmless.
4. Whether defendant's pro se speedy-trial arguments were reviewable.

HOLDINGS

1. The shared bathroom was part of defendant's dwelling as a matter of law because it was accessible only from defendant's and the complainant's rooms and there was no evidence that strangers had routine access to or use of it.
2. The trial court should have granted defendant's request to instruct the jury that he had no duty to retreat from the shared bathroom as a matter of law, assuming he was not the initial aggressor.
3. The instructional error was not harmless because justification was critically important, the verdict sheet did not reveal the basis for the verdict, and the erroneous instruction affirmatively directed the jury to consider whether defendant had a duty to retreat.
4. The court declined to review defendant's pro se speedy-trial arguments because they were unpreserved and unreviewable on the insufficient record.

KEY QUOTATIONS

“As a matter of law, the shared bathroom was a part of defendant's dwelling, notwithstanding that he shared it with the complainant, as opposed to a common area in the building.” (at 1)

“In considering a challenge to a jury instruction, the crucial question is whether the charge, in its entirety, conveys an appropriate legal standard and does not engender any possible confusion” (at 2)

“Based on the foregoing, we cannot find that this error was harmless.” (at 3)

FACTUAL BACKGROUND

Defendant and the complainant lived in separate rooms in a single-residence-occupancy housing complex and shared a bathroom accessible only from their respective rooms. Defendant asserted justification after striking the complainant with an object during an altercation in the bathroom. The trial court instructed the jury that whether the bathroom was part of defendant's dwelling depended on the extent of his exclusive possession and control, rather than instructing as a matter of law that defendant had no duty to retreat from the shared bathroom.

PROCEDURAL HISTORY

The trial court declined to instruct the jury that defendant had no duty to retreat from the shared bathroom as a matter of law while considering his justification defense. The jury convicted defendant, and Supreme Court sentenced him to four years. The Appellate Division reversed the judgment on the law and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The matter was remanded for a new trial.

CASES CITED

- People v. Primus, 178 A.D.2d 565, 566 (2d Dep't 1991)
- People v. McCurdy, 86 A.D.2d 493, 497-498 (2d Dep't 1982)
- People v. Bradford, 191 A.D.3d 484 (1st Dep't 2021), leave denied, 37 N.Y.3d 954 (2021)
- People v. Hernandez, 98 N.Y.2d 175, 182-183 (2002)
- People v. Jones, 3 N.Y.3d 491, 496-497 (2004)
- People v. Bleakley, 69 N.Y.2d 490, 495 (1987)
- People v. Hill, 52 A.D.3d 380, 382 (1st Dep't 2008)
- People v. Crimmins, 36 N.Y.2d 230, 242 (1975)
- People v. Stevens, 245 A.D.2d 39 (1st Dep't 1997)
- People v. Mickens, 219 A.D.2d 543, 544 (1st Dep't 1995), leave denied, 87 N.Y.2d 904 (1995)
- People v. Irizarry, 200 A.D.3d 428 (1st Dep't 2021), leave denied, 37 N.Y.3d 1161 (2022)
- People v. Almeida, 128 A.D.3d 1451, 1453 (4th Dep't 2015), leave denied, 26 N.Y.3d 1006 (2015)
- People v. Fernandez, 304 A.D.2d 504, 504-505 (1st Dep't 2003), leave denied, 100 N.Y.2d 620 (2003)
- People v. King, 85 A.D.3d 412, 413 (1st Dep't 2011), leave denied, 18 N.Y.3d 925 (2012)
- People v. Every, 146 A.D.3d 1157, 1164-1165 (3d Dep't 2017), affirmed, 29 N.Y.3d 1103 (2017)