

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

People v. Brown

200 A.D.2d 416 (1st Dep't 1994) · Decided January 11, 1994

SUMMARY

The court unanimously affirmed the defendant’s conviction for third-degree criminal possession of a controlled substance and his sentence as a second felony offender. It held that the evidence was sufficient and not against the weight of the evidence, rejected or found unpreserved the defendant’s evidentiary and ineffective-assistance claims, and found the remaining contentions meritless.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Per Curiam; Carro, J.P.; Ellerin, J.; Kupferman, J.; Ross, J.
JURISDICTION	New York
DECIDED	January 11, 1994
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of conviction entered after a jury trial.
STANDARD OF REVIEW	The court reviewed whether defendant's guilt was proven beyond a reasonable doubt, whether the verdict was against the weight of the evidence, the preservation and merits of evidentiary claims, and whether the present record demonstrated ineffective assistance of counsel.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Defendant v. The People of the State of New York

TOPICS

- criminal procedure
- evidence
- appellate procedure
- preservation of error
- ineffective assistance

PRACTICE AREAS

- criminal law
- criminal procedure
- evidence
- appellate practice

QUESTIONS PRESENTED

1. Whether defendant's guilt was proven beyond a reasonable doubt and whether the verdict was against the weight of the evidence.
2. Whether testimony concerning defendant's hand-to-hand exchanges and references to the area as a drug-prone location were improperly admitted.
3. Whether the absence of a limiting-instruction request preserved defendant's challenge to the evidence.
4. Whether defendant established ineffective assistance of trial counsel on the appellate record.

HOLDINGS

1. Defendant's guilt was proven beyond a reasonable doubt by overwhelming evidence, and the verdict was not against the weight of the evidence.
2. The challenged testimony and references were admissible as narrative information explaining why police targeted defendant for observation.
3. Defendant's claim concerning the absence of a limiting instruction was unpreserved because defendant never requested such an instruction at trial.
4. On the present record, defendant was not shown to have been denied meaningful representation.

KEY QUOTATIONS

“Under the standards set forth in People v Bleakley (69 NY2d 490, 495), defendant’s guilt was proved beyond a reasonable doubt by overwhelming evidence, and the verdict was not against the weight of that evidence.”
(416)

“By failing to challenge the competence of trial counsel pursuant to CPL 440.10, defendant failed to provide this Court with a reviewable record.” (417)

FACTUAL BACKGROUND

Police officers on anti-narcotics patrol observed defendant from a rooftop engaging in multiple hand-to-hand exchanges. After one exchange, defendant retrieved something from a brown bag concealed in a nearby firebox, and officers later recovered a roll of cash from defendant and found 82 vials of crack in the bag. A jury convicted defendant of criminal possession of a controlled substance in the third degree.

PROCEDURAL HISTORY

Supreme Court, Bronx County, convicted defendant of criminal possession of a controlled substance in the third degree and sentenced him as a second felony offender to a term of four and one-half to nine years. The Appellate Division unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Bleakley, 69 N.Y.2d 490, 495
- People v. Rivera, 186 A.D.2d 504, 505
- People v. Diaz, 170 A.D.2d 395, leave denied, 78 N.Y.2d 954
- People v. Rivera, 71 N.Y.2d 705, 709
- People v. Baldi, 54 N.Y.2d 137, 147

OPINION

PER CURIAM.

—Judgment, Supreme Court, Bronx County (Joseph Mazur, J.) rendered May 29, 1990, convicting defendant, after a jury trial, of criminal possession of a controlled substance in the third degree, and sentencing him as a second felony offender to a term of AVz to 9 years, unanimously affirmed. Police, on anti-narcotics patrol, observed defendant from a rooftop as defendant engaged in multiple hand-to-hand exchanges.

After one exchange, defendant walked to a nearby firebox, pulled out a brown bag, extracted something from the bag, and returned the bag to the firebox. Moments later, police responded, a patdown of defendant recovered a roll of cash, and the bag in the firebox was found to contain 82 vials of crack.

Under the standards set forth in *People v Bleakley* (69 NY2d 490, 495), defendant's guilt was proved beyond a reasonable doubt by overwhelming evidence, and the verdict was not against the weight of that evidence. Defendant's evidentiary challenges, in part, are unpreserved; they are all meritless. Testimony that defendant had engaged in hand-to-hand exchanges, and references to the area as a drug prone location, provided narrative information explaining why police targeted defendant for observation (*People v Rivera*, 186 AD2d 504, 505).

Since defendant never requested a limiting instruction at trial, that claim also is unpreserved (*People v Diaz*, 170 AD2d 395, lv denied 78 NY2d 954). By failing to challenge the competence of trial counsel pursuant to CPL 440.10, defendant failed to provide this Court with a reviewable record.

On the *417basis of the present record, we do not find that defendant was denied meaningful representation (see, *People v Rivera*, 71 NY2d 705, 709; *People v Baldi*, 54 NY2d 137, 147). We have examined defendant's remaining contentions and find them to be without merit. Concur — Carro, J. P., Ellerin, Kupferman and Ross, JJ.