

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

People v. Socciarelli

2022 NY Slip Op 01713 (App. Div. 2022) · No. 1165 KA 19-01167 · Decided March 11, 2022

SUMMARY

The New York Appellate Division, Fourth Department, affirmed Michael W. Socciarelli’s convictions for multiple sex offenses, rejecting challenges concerning the voluntariness of his statements, jury-note responses, prosecutorial misconduct, disclosure violations, sufficiency and weight of the evidence, and effectiveness of counsel. The court found a Rosario violation but held that the delayed disclosure did not substantially prejudice the defense and did not warrant a mistrial. In the interest of justice, the court modified the judgment to require the sentences to run concurrently, resulting in an aggregate term of 25 years’ imprisonment followed by 25 years of postrelease supervision.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Centra, J.P.; Peradotto, J.; Lindley, J.; Curran, J.; Winslow, J.
JURISDICTION	New York
DECIDED	March 11, 2022
DOCKET	1165 KA 19-01167
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of the Ontario County Court entered after a jury trial and convicting him of rape and other sexual offenses.
STANDARD OF REVIEW	Statements are reviewed under the voluntariness standards in CPL 60.45. Unpreserved claims were reviewed only if the court elected to exercise interest-of-justice discretion. Legal sufficiency was reviewed by viewing the evidence in the light most favorable to the People; weight of the evidence was reviewed in light of the elements charged to the jury. Ineffective-assistance claims were evaluated under the totality of the evidence, law, and circumstances as of the time of representation. Rosario and Brady disclosure claims were reviewed for substantial prejudice and meaningful and effective use at trial.

PRECEDENTIAL VALUE

Published New York Appellate Division opinion

PARTIES

Michael W. Socciarelli v. The People of the State of New York

TOPICS

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QUESTIONS PRESENTED

1. Whether defendant's statements to law enforcement were involuntary because the investigator's statement coerced him into confessing.
2. Whether defendant waived his challenge to the trial court's responses to two jury notes by requesting the responses given.
3. Whether defendant's prosecutorial-misconduct claim was preserved and warranted interest-of-justice review.
4. Whether delayed disclosure of the video violated Rosario and Brady and required a mistrial.
5. Whether the evidence was legally sufficient and whether the verdict was against the weight of the evidence.
6. Whether defendant was denied effective assistance of counsel.
7. Whether the aggregate sentence was unduly harsh and severe.
8. Whether the sentences should run concurrently.

HOLDINGS

1. The investigator's statement that police would assume defendant forcibly raped the victim unless he explained the events was a generalized comment about the benefits of cooperating and did not create undue pressure or a substantial risk of false self-incrimination; suppression was properly denied.
2. Defendant waived his challenge to the court's responses to two jury notes because the court gave the responses requested by the defense.
3. Defendant failed to preserve his claim of prosecutorial misconduct because he did not object to the alleged instances at trial, and the court declined to review the claim in the interest of justice.
4. The delayed disclosure of the video violated Rosario because the video was in the actual possession of a law-enforcement agency, but the violation did not require a mistrial because defendant failed to show substantial prejudice.
5. The alleged Brady violation did not require a mistrial because defendant received the video in time for meaningful and effective use at trial, and he knew or should have known of its existence and contents.

6. The evidence was legally sufficient to support the convictions, and the verdict was not against the weight of the evidence.
7. Defendant received meaningful representation and therefore was not denied effective assistance of counsel.
8. The aggregate 32-year sentence was unduly harsh and severe under the circumstances, so the court modified the judgment in the interest of justice to direct that all sentences run concurrently, resulting in 25 years of imprisonment plus 25 years of postrelease supervision.

KEY QUOTATIONS

*“The investigator’s statement was a “generalized comment to defendant regarding the benefits of cooperating with the police”” ([*1])*

*“defendant “ought not be allowed to take the benefit of the favorable charge and complain about it on appeal”” ([*1])*

*“reversal is required only “if the defense is substantially prejudiced by the delay”” ([*1])*

*“defendant has not made the necessary showing of substantial prejudice” ([*1])*

*“inasmuch as defendant received the material in time for its meaningful and effective use at trial” ([*1])*

FACTUAL BACKGROUND

The convictions arose from defendant's conduct with a minor who was physically helpless because of extreme intoxication. During the investigation, defendant made statements after an investigator said police would assume that defendant had forcibly raped the victim unless he provided his explanation. A video provided by a witness to an investigator was disclosed late, but the trial court gave the defense additional time to review it and an opportunity to recall witnesses. Defendant received an aggregate sentence of 32 years' imprisonment plus postrelease supervision.

PROCEDURAL HISTORY

The Ontario County Court entered judgment on April 25, 2019, after a jury convicted defendant of rape in the first degree, criminal sexual act in the first degree, rape in the third degree, sexual abuse in the first degree, and criminal sexual act in the third degree. On appeal, defendant challenged the voluntariness of his statements, jury-note responses, prosecutorial conduct, delayed disclosure of Rosario and Brady material, sufficiency and weight of the evidence, effectiveness of counsel, and sentence severity. The Appellate Division rejected the claims except that it exercised its interest-of-justice discretion to direct concurrent sentences.

DISPOSITION

affirmed

CASES CITED

- People v. Woods, 93 A.D.3d 1287, 1288 (4th Dep't 2012), leave denied, 19 N.Y.3d 969 (2012)

- People v. Clark, 194 A.D.3d 948, 951 (2d Dep't 2021), leave denied, 37 N.Y.3d 991 (2021)
- People v. Capella, 180 A.D.3d 498, 499 (1st Dep't 2020), leave denied, 35 N.Y.3d 968 (2020)
- People v. Backus, 67 A.D.3d 1428, 1429 (4th Dep't 2009), leave denied, 13 N.Y.3d 936 (2010)
- People v. Shaffer, 66 N.Y.2d 663, 665 (1985)
- People v. O'Neill, 169 A.D.3d 1515, 1515 (4th Dep't 2019)
- People v. Lostumbo, 182 A.D.3d 1007, 1009 (4th Dep't 2020), leave denied, 35 N.Y.3d 1046 (2020)
- People v. Streeter, 166 A.D.3d 1509, 1510 (4th Dep't 2018), leave denied, 32 N.Y.3d 1210 (2019)
- People v. Standsblack, 162 A.D.3d 1523, 1527 (4th Dep't 2018), leave denied, 32 N.Y.3d 1008 (2018)
- People v. Washington, 86 N.Y.2d 189, 192 (1995)
- People v. Martinez, 71 N.Y.2d 937, 940 (1988)
- People v. Lluveres, 15 A.D.3d 848, 849 (4th Dep't 2005), leave denied, 5 N.Y.3d 807 (2005)
- People v. Gardner, 26 A.D.3d 741, 741 (4th Dep't 2006), leave denied, 6 N.Y.3d 848 (2006)
- People v. Walters, 124 A.D.3d 1321, 1323 (4th Dep't 2015), leave denied, 25 N.Y.3d 1209 (2015)
- People v. Hines, 132 A.D.3d 1385, 1385 (4th Dep't 2015), leave denied, 26 N.Y.3d 1109 (2016)
- People v. LaValle, 3 N.Y.3d 88, 110 (2004)
- People v. Rivera, 82 A.D.3d 1590, 1592 (4th Dep't 2011), leave denied, 17 N.Y.3d 800 (2011)
- People v. Contes, 60 N.Y.2d 620, 621 (1983)
- People v. Bleakley, 69 N.Y.2d 490, 495 (1987)
- People v. Danielson, 9 N.Y.3d 342, 349 (2007)
- People v. Baldi, 54 N.Y.2d 137, 147 (1981)

OPINION

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PER CURIAM.

People v Socciarelli (2022 NY Slip Op 01713) People v Socciarelli 2022 NY Slip Op 01713
Decided on March 11, 2022 Appellate Division, Fourth 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 on March 11, 2022

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Fourth Judicial Department PRESENT: CENTRA, J.P., PERADOTTO,
LINDLEY, CURRAN, AND WINSLOW, JJ. 1165 KA 19-01167

[*1]THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

vMICHAEL W. SOCCIARELLI, DEFENDANT-APPELLANT. (APPEAL NO. 1.)

LEANNE LAPP, PUBLIC DEFENDER, CANANDAIGUA, THE LEGAL AID BUREAU OF
BUFFALO, INC., BUFFALO (ALLYSON L. KEHL-WIERZBOWSKI OF COUNSEL), FOR
DEFENDANT-APPELLANT. JAMES B. RITTS, DISTRICT ATTORNEY, CANANDAIGUA (V.
CHRISTOPHER EAGGLESTON OF COUNSEL), FOR RESPONDENT. Appeal from a
judgment of the Ontario County Court (Frederick G. Reed, A.J.), rendered April 25, 2019. The

judgment convicted defendant upon a jury verdict of rape in the first degree, criminal sexual act in the first degree, rape in the third degree, sexual abuse in the first degree and criminal sexual act in the third degree. It is hereby ORDERED that the judgment so appealed from is unanimously modified as a matter of discretion in the interest of justice by directing that the sentences shall run concurrently with one another, and as modified the judgment is affirmed. Memorandum: Defendant appeals from a judgment convicting him following a jury trial of, inter alia, rape in the first degree (Penal Law § 130.35 [2]) and criminal sexual act in the first degree (§ 130.50 [2]), which stemmed from his conduct with a minor who was physically helpless due to extreme intoxication. Contrary to defendant's contention, County Court did not err in refusing to suppress, as involuntary, statements he made to law enforcement (see generally CPL 60.45 [2] [a], [b] [i]). As the basis for his contention, defendant identifies an investigator's statement that the police would be "going on the assumption" that defendant forcibly raped the victim, which amounted to a "big difference in the law," unless defendant provided his explanation of events. Defendant thus contends that he was coerced into confessing. We reject that contention. The investigator's statement was a "generalized comment to defendant regarding the benefits of cooperating with the police" (People v Woods, 93 AD3d 1287, 1288 [4th Dept 2012], lv denied 19 NY3d 969 [2012]), which did not create any "undue pressure" (CPL 60.45 [2] [a]) or "a substantial risk that . . . defendant might falsely incriminate himself" (CPL 60.45 [2] [b] [i]; see People v Clark, 194 AD3d 948, 951 [2d Dept 2021], lv denied 37 NY3d 991 [2021]). We conclude that defendant waived his contention that the court erred in responding to two jury notes when the court provided the exact response requested by the defense (see People v Capella, 180 AD3d 498, 499 [1st Dept 2020], lv denied 35 NY3d 968 [2020]; People v Backus, 67 AD3d 1428, 1429 [4th Dept 2009], lv denied 13 NY3d 936 [2010]). Defendant " 'ought not be allowed to take the benefit of the favorable charge and complain about it on appeal' " (People v Shaffer, 66 NY2d 663, 665 [1985]; see People v O'Neill, 169 AD3d 1515, 1515 [4th Dept 2019]). We further conclude that defendant failed to preserve for our review his contention that he was denied a fair trial by instances of prosecutorial misconduct inasmuch as "defendant did not object to any of those alleged instances at trial" (People v Lostumbo, 182 AD3d 1007, 1009 [4th Dept 2020], lv denied 35 NY3d 1046 [2020]; see People v Streeter, 166 AD3d 1509, 1510 [4th Dept 2018], lv denied 32 NY3d 1210 [2019]). We decline to exercise our power to review that contention as a matter of discretion in the interest of justice (see CPL 470.15 [6] [a]; People v Standsblack, 162 AD3d 1523, 1527 [4th Dept 2018], lv denied 32 NY3d 1008 [2018]). We agree with defendant, and the People correctly conceded at trial, that the prosecutor's delay in disclosing a video that was provided to an investigator by a witness constituted a Rosario violation inasmuch as the video "was in the actual possession of a law enforcement agency" (People v Washington, 86 NY2d 189, 192 [1995]). Contrary to defendant's contention, however, the court did not err in denying his request for a mistrial. Where, as here, there is an issue of delayed disclosure of Rosario material, reversal is required only "if the defense is substantially prejudiced by the delay" (People v Martinez, 71 NY2d 937, 940 [1988];

see *People v Lluveres*, 15 AD3d 848, 849 [4th Dept 2005], lv denied 5 NY3d 807 [2005]). Here, the court gave the defense additional time to review the evidence and the opportunity to recall witnesses for further cross-examination (see *People v Gardner*, 26 AD3d 741, 741 [4th Dept 2006], lv denied 6 NY3d 848 [2006]). Under the circumstances, "defendant has not made the necessary showing of substantial prejudice" (*People v Walters*, 124 AD3d 1321, 1323 [4th Dept 2015], lv denied 25 NY3d 1209 [2015]). We also reject defendant's contention that a mistrial was warranted as the result of an alleged Brady violation. Even assuming, arguendo, that the evidence on the video could be deemed exculpatory, we conclude that a mistrial was not warranted "inasmuch as defendant received the material in time for its meaningful and effective use at trial" (*People v Hines*, 132 AD3d 1385, 1385 [4th Dept 2015], lv denied 26 NY3d 1109 [2016]). Moreover, defendant knew or should have known of the existence of the video as well as the nature of its contents inasmuch as the video itself leaves no doubt that defendant knew he was being recorded (see *People v LaValle*, 3 NY3d 88, 110 [2004]; *People v Rivera*, 82 AD3d 1590, 1592 [4th Dept 2011], lv denied 17 NY3d 800 [2011]). We likewise conclude that, viewing the evidence in the light most favorable to the People (see *People v Contes*, 60 NY2d 620, 621 [1983]), the evidence is legally sufficient to support the conviction (see generally *People v Bleakley*, 69 NY2d 490, 495 [1987]) and, viewing the evidence in light of the elements of the crimes as charged to the jury (see *People v Danielson*, 9 NY3d 342, 349 [2007]), the verdict is not against the weight of the evidence (see generally *Bleakley*, 69 NY2d at 495). Although defendant contends that he was denied effective assistance of counsel based on several alleged errors, we reject that contention. Viewing the evidence, the law and the circumstances of the case, in totality and as of the time of the representation, we conclude that defense counsel provided meaningful representation (see generally *People v Baldi*, 54 NY2d 137, 147 [1981]). Finally, defendant contends that the aggregate sentence of 32 years' imprisonment is unduly harsh and severe because he has no prior sex offenses on his criminal record and the People's preindictment plea offer contemplated a 10-year sentence, which was increased to 15 years postindictment. We agree and therefore modify the judgment as a matter of discretion in the interest of justice by directing that all of the sentences shall run concurrently with one another (see CPL 470.15 [6] [b]), which results in an aggregate term of imprisonment of 25 years plus 25 years of postrelease supervision. Entered: March 11, 2022 Ann Dillon Flynn Clerk of the Court