

NEW YORK COURT OF APPEALS

The People v. Anthony V. Pavone

26 N.Y.3d 629, 47 N.E.3d 56, 26 N.Y.S.3d 728 (2015) · No. No. 199 · Decided December 17, 2015

SUMMARY

The New York Court of Appeals considers whether the prosecution improperly used the defendant’s post-arrest silence to challenge his credibility concerning an extreme emotional disturbance defense. The court holds that using post-arrest silence for impeachment violates the New York Constitution’s due process guarantees, and addresses preservation, harmless error, and ineffective assistance of counsel issues. The court ultimately affirms the Appellate Division.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Rivera, J.; Lippman, C.J.; Fahey, J.; Pigott, J.; Stein, J.; Abdus-Salaam, J.
JURISDICTION	New York
DECIDED	December 17, 2015
DOCKET	No. 199
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed, by leave of a judge of the New York Court of Appeals, from an Appellate Division order affirming his convictions for two counts of first-degree murder and one count of second-degree criminal possession of a weapon.
STANDARD OF REVIEW	Constitutional error was reviewed for harmlessness beyond a reasonable doubt. Ineffective assistance was reviewed under New York's meaningful-representation standard, requiring assessment of counsel's performance in its totality and deference to legitimate strategic choices.
PRECEDENTIAL VALUE	Published precedential opinion of the New York Court of Appeals; majority opinion.
PARTIES	Anthony V. Pavone v. The People

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QUESTIONS PRESENTED

1. Whether the prosecution's use of defendant's post-arrest silence to challenge the credibility of his extreme emotional disturbance defense violated the Due Process Clause of the New York Constitution.
2. If the constitutional violation was preserved, whether it was harmless beyond a reasonable doubt in light of the evidence disproving the EED defense.
3. Whether defense counsel rendered ineffective assistance by failing to object to references to defendant's silence and by failing to provide audio recordings to the defense expert.

HOLDINGS

1. Under the New York Constitution, the prosecution may not use a defendant's post-arrest silence, including for impeachment or to challenge the credibility of an asserted EED defense, because doing so violates state due process guarantees.
2. The constitutional violation was harmless beyond a reasonable doubt because overwhelming evidence established that defendant failed to prove his EED defense and there was no reasonable possibility that the references to his silence affected the verdict.
3. Defense counsel provided meaningful representation and was not ineffective for failing to object to references to defendant's silence or for providing the defense expert with transcripts rather than audio recordings.

KEY QUOTATIONS

"We now conclude that use of defendant's silence for such purpose violates state due process guarantees." (639)

"Having made that promise, the State may not, consistent with any concept of fundamental fairness and due process, subsequently renege on that promise by utilizing [such] silence against [the defendant]." (641)

"We therefore reject defendant's ineffective assistance of counsel claim." (648)

FACTUAL BACKGROUND

Anthony Pavone shot and killed Patricia Howard, his former longtime lover, and Timothy Carter, Howard's romantic partner. Pavone admitted the shootings but asserted an extreme emotional disturbance defense, claiming depression, anguish, and loss of rational control. The prosecution presented evidence that he stalked and sought to control Howard, located Carter's home, arrived armed, acted calmly before the shootings, and behaved deliberately during and after the killings. After arrest and Miranda warnings, Pavone remained largely silent; the prosecution later elicited testimony about that silence and emphasized it during summation as evidence that he fabricated his EED defense.

PROCEDURAL HISTORY

A jury convicted defendant of two first-degree murders and second-degree criminal possession of a weapon. The trial court imposed concurrent life-without-parole sentences on the murder counts and a ten-year sentence plus five years of postrelease supervision on the weapons count. The Appellate Division, Third Department, affirmed, concluding that admission of testimony concerning defendant's post-Miranda silence was harmless and rejecting his ineffective-assistance claim; one justice dissented. The Court of Appeals granted leave and affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Alvarez, 20 N.Y.3d 75, 81 (2012)
- People v. McLean, 15 N.Y.3d 117, 120-121 (2010)
- People v. Basora, 75 N.Y.2d 992, 993 (1990)
- People v. Conyers, 52 N.Y.2d 454, 457-459 (1981)
- People v. Von Werne, 41 N.Y.2d 584, 587 (1977)
- People v. Williams, 25 N.Y.3d 185, 190, 194 (2015)
- People v. Baret, 23 N.Y.3d 777, 804 (2014)
- People v. P.J. Video, 68 N.Y.2d 296, 303 (1986)
- People v. Scott, 79 N.Y.2d 474, 490-491 (1992)
- People v. Rutigliano, 261 N.Y. 103, 107 (1933)
- Doyle v. Ohio, 426 U.S. 610, 619 (1976)
- People v. DeGeorge, 73 N.Y.2d 614, 619-620 (1989)
- United States v. Hale, 422 U.S. 171, 176-177, 180 (1975)
- People v. Dawson, 50 N.Y.2d 311, 322 (1980)
- People v. Samms, 95 N.Y.2d 52, 55-56 (2000)
- People v. Crimmins, 36 N.Y.2d 230, 237 (1975)
- People v. Best, 19 N.Y.3d 739, 744 (2012)
- People v. Harris, 95 N.Y.2d 316, 318-319 (2000)
- People v. Casassa, 49 N.Y.2d 668, 675-681 (1980)
- People v. Moye, 66 N.Y.2d 887, 889 (1985)
- People v. Diaz, 15 N.Y.3d 40, 45 (2010)
- People v. Roldan, 222 A.D.2d 132 (1st Dep't 1996)
- People v. Maher, 89 N.Y.2d 456, 462-463 (1997)
- People v. Benevento, 91 N.Y.2d 708, 712 (1998)
- People v. Baldi, 54 N.Y.2d 137, 147 (1981)
- People v. Barboni, 21 N.Y.3d 393, 406 (2013)

- People v. Satterfield, 66 N.Y.2d 796, 799-800 (1985)
- People v. Modica, 64 N.Y.2d 828, 829 (1985)
- People v. Caban, 5 N.Y.3d 143, 152, 156 (2005)

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