

NEW YORK COURT OF APPEALS

The People v. John Rossi

24 N.Y.3d 968 (2014) · No. No. 147 · Decided October 16, 2014

SUMMARY

The New York Court of Appeals affirmed an order upholding the warrantless search and seizure of a firearm under the emergency doctrine. The court held that the Appellate Division's determination that an ongoing emergency justified the search was supported by the record and therefore beyond the Court's review. The court also concluded that the defendant's remaining claims were either unpreserved or without merit.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Chief Judge Lippman; Judge Graffeo; Judge Read; Judge Smith; Judge Pigott; Judge Rivera; Judge Abdus-Salaam
JURISDICTION	New York
DECIDED	October 16, 2014
DOCKET	No. 147
DISPOSITION	affirmed
PROCEDURAL POSTURE	After a jury convicted defendant of criminal possession of a weapon in the second degree, the Appellate Division affirmed. The New York Court of Appeals affirmed the Appellate Division's order.
STANDARD OF REVIEW	Application of the emergency doctrine is a mixed question of law and fact beyond the Court of Appeals' review when there is record support for the lower courts' findings.
PRECEDENTIAL VALUE	published
PARTIES	John Rossi v. The People of the State of New York

TOPICS

- search and seizure
- warrant requirement
- suppression of evidence
- criminal procedure
- appellate procedure

PRACTICE AREAS

- criminal procedure
- constitutional law
- appellate procedure

QUESTIONS PRESENTED

1. Whether the warrantless search of defendant's residence and backyard for the gun was lawful under the emergency doctrine.
2. Whether the Court of Appeals could review the Appellate Division's determination that the emergency continued when the search occurred.
3. Whether defendant's challenges to the legal sufficiency of the evidence and alleged prosecutorial misconduct were preserved for appellate review.
4. Whether defendant's ineffective-assistance-of-counsel claim had merit.

HOLDINGS

1. The application of the emergency doctrine presented a mixed question of law and fact beyond the Court of Appeals' review because the Appellate Division's conclusion that the warrantless search was lawful had record support.
2. The Court of Appeals affirmed without disturbing the Appellate Division's determination that the warrantless search for and seizure of the gun was lawful under the emergency exception.
3. Defendant's claims that the conviction was not based on legally sufficient evidence and that prosecutorial misconduct denied him a fair trial were unpreserved.
4. Defendant's ineffective-assistance-of-counsel claim was without merit.

KEY QUOTATIONS

"Because there is record support for the majority's conclusion that the search was lawful under the emergency exception, "any further review is beyond this Court's jurisdiction"" (at 3-4)

FACTUAL BACKGROUND

Police responded to a 911 call reporting that defendant had shot himself in the hand and found him bleeding inside his residence, where three children were present. Defendant said he did not know where the gun was, and officers searched the residence and backyard while an EMT treated him. An officer found a loaded gun near a backyard shed.

PROCEDURAL HISTORY

Police recovered a loaded gun without a warrant from defendant's backyard after responding to a report that defendant had shot himself. The suppression court upheld the search, and defendant was convicted after a jury trial. The Appellate Division affirmed in a divided decision, and its dissenting Justice granted leave to appeal. The Court of Appeals affirmed, concluding that further review of the emergency-doctrine determination was beyond its jurisdiction because the lower court's conclusion had record support.

DISPOSITION

affirmed

CASES CITED

- People v. Doll, 21 N.Y.3d 665, 671 (2013), rearg denied, 22 N.Y.3d 1053 (2014), cert. denied, 134 S. Ct. 1552 (2014)
- People v. McBride, 14 N.Y.3d 440, 446 (2010), cert. denied, 131 S. Ct. 327 (2010)
- People v. Mitchell, 39 N.Y.2d 173, 177-178 (1976), cert. denied, 426 U.S. 953 (1976)
- People v. Dallas, 8 N.Y.3d 890, 891 (2007)
- People v. Molnar, 98 N.Y.2d 328, 335 (2002)

OPINION

PER CURIAM.

===== This memorandum is uncorrected and subject to revision before publication in the New York Reports. No. 147 The People &c., Respondent, v. John Rossi, Appellant. Jillian S. Harrington, for appellant. Kevin C. King, for respondent. MEMORANDUM: The order of the Appellate Division should be affirmed.

On July 11, 2009 at approximately 5:10 a.m., police officers arrived at defendant's residence in response to a 911 call initiated by defendant's wife, who reported that defendant had shot himself in the hand. She was unable to tell the - 1 - - 2 - No. 147 officers the gun's whereabouts. Two officers entered the residence and observed defendant standing at the end of a hallway, bleeding profusely from his hand.

The officers drew their weapons and ordered defendant into the living room where one of the officers frisked him but found no weapon. Defendant's two children and a third child were in the residence. Although defendant said that he had been cleaning the gun when it discharged, he stated that he did not know where the gun was located. While an EMT was tending to defendant's wound, the officers searched the residence.

A third officer began searching the backyard, eventually discovering a loaded gun near a shed. Defendant was charged with criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]). At the suppression hearing, defendant argued that the search of his premises was unconstitutional because by the time the gun was discovered, the scene was secure and the emergency had ended.

The People countered that the testimony established that for the protection of the children who may have come across the gun, the officers needed to secure it and did so contemporaneously with escorting the children from the residence.

The suppression court ruled that the warrantless search for and recovery of the gun were lawful. After a jury trial, defendant was convicted as charged and, on appeal, challenged, among other

things, the suppression ruling. - 2 - - 3 - No. 147 A divided Appellate Division affirmed (99 AD3d 947 [2d Dept 2012]).

The majority determined that "defendant's incoherence and evasive answers about the location of the gun and the presence of children on the premises, established an ongoing emergency and danger to life, justifying the search for and seizure of the gun" (id. at 950 [citations omitted]).

The court further concluded that the suppression testimony established that the officer searching the backyard was aware that other officers were searching the residence but "was not aware that the children were secure and out of danger" (id.).

The dissenting Justice asserted that although the initial entry into the house was justified in light of the information that defendant had shot himself and that emergency was extended when the officers learned that there were children in the house, "once the police frisked the defendant and knew that the children did not have the gun, the emergency abated" (id. at 953 [Chambers, J., dissenting]).

The dissenting Justice granted defendant leave to appeal. Application of the "emergency doctrine" involves a mixed question of law and fact that is beyond this Court's review so long as there is record support for the findings of the courts below (see *People v Doll*, 21 NY3d 665, 671 [2013], rearg denied 22 NY3d 1053 [2014] and cert denied ___ US ___, 134 S Ct 1552 [2014]); *People v McBride*, 14 NY3d 440, 446 [2010], cert denied ___ US ___, 131 S Ct 327 [2010]).

The Appellate Division majority and dissent both applied the test set forth in *People v Mitchell* - 3 - - 4 - No. 147 (39 NY2d 173, 177-178 [1976], cert denied 426 US 953 [1976]) and reached conflicting conclusions as to when the emergency ceased.

Because there is record support for the majority's conclusion that the search was lawful under the emergency exception, "any further review is beyond this Court's jurisdiction" (*People v Dallas*, 8 NY3d 890, 891 [2007], quoting *People v Molnar*, 98 NY2d 328, 335 [2002]). Defendant's remaining contentions that his conviction was not based upon legally sufficient evidence and that prosecutorial misconduct deprived him of a fair trial are unpreserved.

His claim of ineffective assistance of counsel is without merit. * * * * *
Order affirmed, in a memorandum. Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott, Rivera and Abdus-Salaam concur. Decided October 16, 2014 - 4 -