

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

The People of the State of New York v. Jerome Smith

People v. Smith, 2020 NY Slip Op 05782 (N.Y. Ct. App. 2020) · No. 2017-05713 · Decided October 14, 2020

SUMMARY

The Appellate Division, Second Department modified Jerome Smith's convictions by reducing burglary in the first degree to burglary in the second degree and robbery in the second degree to robbery in the third degree, based on legally insufficient proof of physical injury. The court also vacated the persistent violent felony offender adjudication and sentences, remanding for resentencing. It otherwise upheld the denial of suppression motions, the defendant's waiver of counsel, and the admission of the challenged evidence as harmless beyond a reasonable doubt.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Alan D. Scheinkman, P.J.; Leonard B. Austin, J.; Angela G. Iannacci, J.; Paul Wooten, J.
JURISDICTION	New York
DECIDED	October 14, 2020
DOCKET	2017-05713
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed from a judgment of conviction entered after a jury trial. The appeal also brought up for review the denial, after a suppression hearing, of defendant's motions to suppress physical and identification evidence.
STANDARD OF REVIEW	Legal sufficiency was reviewed by viewing the evidence in the light most favorable to the People and determining whether there was a valid line of reasoning and permissible inferences from which a rational jury could find the elements proven beyond a reasonable doubt. Suppression rulings were reviewed under the applicable constitutional and statutory standards. The admission of improperly obtained evidence was reviewed for harmlessness beyond a reasonable doubt.

PRECEDENTIAL VALUE	Published New York appellate decision; precedential value not otherwise qualified in the opinion.
PARTIES	Jerome Smith v. The People of the State of New York

TOPICS

criminal procedure suppression of evidence right to counsel speedy trial harmless error

PRACTICE AREAS

criminal law criminal procedure appellate practice

QUESTIONS PRESENTED

1. Whether defendant's pro se speedy-trial motions were properly denied.
2. Whether defendant knowingly, voluntarily, and intelligently waived his right to counsel and elected to proceed pro se.
3. Whether the evidence was legally sufficient to establish physical injury, an element of first-degree burglary and second-degree robbery.
4. Whether physical evidence recovered from defendant's vehicle and identification evidence should have been suppressed.
5. Whether the police frisk and pocket search were lawful and, if not, whether admission of the seized evidence was harmless beyond a reasonable doubt.
6. Whether prosecutorial remarks, jury-selection procedure, and sentencing as a persistent violent felony offender required reversal or modification.

HOLDINGS

1. The Supreme Court properly denied defendant's speedy-trial motions because the first pro se motion was not properly adopted by assigned counsel, the second was not made on reasonable notice to the People, and the time chargeable to the People was less than six months.
2. Defendant knowingly, voluntarily, and intelligently waived his right to counsel and validly proceeded pro se.
3. The evidence was legally insufficient to establish that the complainant suffered physical injury; therefore, the first-degree burglary conviction was reduced to second-degree burglary and the second-degree robbery conviction was reduced to third-degree robbery.
4. Suppression of the items observed in defendant's vehicle and of the identification evidence was properly denied.
5. The frisk and resulting seizure of jewelry and cash were unlawful because the officer lacked facts supporting reasonable suspicion that defendant was armed or posed a safety threat, and the officer did

not testify that the object felt in defendant's pocket was believed to be a weapon. However, the erroneous admission of the evidence was harmless beyond a reasonable doubt.

6. The persistent violent felony offender adjudication and sentences were vacated because the People failed to establish that the ten-year period between the prior felony sentence and the present felony was sufficiently tolled.

KEY QUOTATIONS

*“For a waiver of the right to counsel to be effective, “the trial court must be satisfied that it has been made competently, intelligently and voluntarily”” (*2)*

*“The court must make a “searching inquiry” to ensure that a defendant is “aware of the dangers and disadvantages of proceeding without counsel”” (*2)*

*“A verdict is legally sufficient when, viewing the facts in a light most favorable to the People, ‘there is a valid line of reasoning and permissible inferences from which a rational jury could have found the elements of the crime proved beyond a reasonable doubt’” (*2)*

FACTUAL BACKGROUND

During an October 2015 home invasion, an unarmed perpetrator ripped jewelry from the complainant's neck and wrist and took a jewelry box, cash, and a debit card before fleeing in a car. The complainant sustained a neck laceration and wrist scratches but did not go to the hospital and described only soreness and pain of unspecified duration. Police later stopped defendant, frisked him, and seized jewelry and cash; other items were observed in plain view in his vehicle. The complainant and an eyewitness identified defendant, and the court found that their observations supplied an independent source for the identifications.

PROCEDURAL HISTORY

Defendant was indicted for, among other offenses, first-degree burglary and second-degree robbery. After a Dunaway/Mapp/Huntley/Wade hearing, the Supreme Court, Queens County, denied suppression of physical and identification evidence. Defendant represented himself at portions of the hearing, trial, and sentencing, with standby counsel. A jury convicted him of first-degree burglary, second-degree robbery, fourth-degree grand larceny, and fourth-degree criminal possession of stolen property, and the court sentenced him as a persistent violent felony offender. The Appellate Division modified the judgment by reducing the burglary and robbery convictions, vacating the persistent-violent-felony-offender adjudication and sentences, and remitting for resentencing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The matter was remitted to the Supreme Court, Queens County, for resentencing after reducing the burglary conviction to second-degree burglary, reducing the robbery conviction to third-degree robbery, and vacating the

persistent violent felony offender adjudication and all sentences.

CASES CITED

- People v. Pitcher, 182 A.D.2d 878
- People v. Beames, 174 A.D.2d 775
- People v. Alvarez, 46 A.D.3d 476
- People v. Goberdhan, 249 A.D.2d 324
- People v. Harvall, 196 A.D.2d 553
- People v. Rosa, 171 A.D.3d 1099
- People v. Patel, 160 A.D.3d 530
- People v. Lewins, 151 A.D.3d 575
- People v. McIntyre, 36 N.Y.2d 10, 17
- People v. Crampe, 17 N.Y.3d 469, 481-482, cert. denied 565 U.S. 1261
- People v. Cole, 120 A.D.3d 72, 74, lv denied 24 N.Y.3d 1082
- People v. Arroyo, 98 N.Y.2d 101, 104
- People v. Morrow, 143 A.D.3d 919
- People v. Sutton, 161 A.D.3d 783-784
- People v. Cucchiara, 174 A.D.3d 816, 817
- People v. Wright, 152 A.D.3d 801
- People v. Providence, 2 N.Y.3d 579
- People v. Danielson, 9 N.Y.3d 342, 349
- People v. Acosta, 80 N.Y.2d 665, 672
- People v. Contes, 60 N.Y.2d 620, 621
- Matter of Philip A., 49 N.Y.2d 198
- People v. Zalevsky, 82 A.D.3d 1136
- People v. Richmond, 36 A.D.3d 721
- People v. Stokes, 140 A.D.3d 800
- People v. Boney, 119 A.D.3d 701
- People v. Taylor, 83 A.D.3d 1105
- People v. Cicciari, 90 A.D.2d 853
- People v. Pleasant, 146 A.D.3d 985
- People v. Chertok, 303 A.D.2d 519
- People v. Hosannah, 178 A.D.3d 1074
- People v. Currie, 117 A.D.3d 1074
- People v. Shuler, 98 A.D.3d 695, 697
- People v. Mais, 71 A.D.3d 1163, 1165
- People v. Crimmins, 36 N.Y.2d 230

- People v. Thomas, 131 A.D.3d 712
- People v. Thigpen, 234 A.D.2d 486
- People v. Escamilla, 168 A.D.3d 758
- People v. Grace, 179 A.D.3d 1092, 1093
- People v. Lopez, 150 A.D.3d 1266
- People v. Hatcher, 130 A.D.3d 648
- People v. Gonzalez, 83 A.D.3d 1093
- People v. Dawson, 178 A.D.3d 719
- People v. Mancuso, 22 N.Y.2d 679
- People v. Ames, 96 A.D.3d 867, 868
- People v. Eley, 35 A.D.3d 498
- People v. Cassese, 58 A.D.3d 639, 639-640
- People v. Ortiz, 23 A.D.3d 499

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