

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

People v. Greenspan

2020 NY Slip Op 04408 (N.Y. Ct. App. 2020) · No. 2017-06063 · Decided August 5, 2020

SUMMARY

The Appellate Division, Second Department, reversed Daniel Greenspan's murder conviction and remitted the matter for a new trial before a different Justice. The court held that the trial court deprived the defendant of a fair trial by negotiating a plea agreement with a testifying codefendant that required testimony against the defendant in exchange for a more favorable sentence.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	John M. Leventhal, J.P.; Joseph J. Maltese, J.; Colleen D. Duffy, J.; Linda Christopher, J.
JURISDICTION	New York
DECIDED	August 5, 2020
DOCKET	2017-06063
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed from a judgment of the County Court, Suffolk County, convicting him of murder in the second degree after a jury trial and imposing sentence.
STANDARD OF REVIEW	The Appellate Division independently reviews the weight of the evidence under CPL 470.15(5), while giving great deference to the jury's opportunity to observe witnesses, hear testimony, and assess demeanor. Unpreserved issues may be reached in the exercise of interest-of-justice jurisdiction.
PRECEDENTIAL VALUE	Published intermediate appellate opinion; precedential under applicable New York law.
PARTIES	Daniel Greenspan v. The People of the State of New York

TOPICS

criminal procedure

plea bargaining

due process

appellate procedure

standard of review

PRACTICE AREAS

criminal procedure

appellate practice

constitutional law

QUESTIONS PRESENTED

1. Whether the murder conviction was against the weight of the evidence.
2. Whether the County Court deprived the defendant of due process and a fair trial by negotiating and entering into a plea or sentencing agreement with a testifying codefendant in exchange for that codefendant's testimony against the defendant.
3. Whether the unpreserved fair-trial claim should be reviewed in the interest of justice.

HOLDINGS

1. The verdict finding the defendant guilty of second-degree murder was not against the weight of the evidence.
2. A trial court commits reversible error when it negotiates and enters into an agreement with a codefendant requiring that codefendant to testify against the defendant in exchange for a more favorable sentence.
3. The Appellate Division exercised its interest-of-justice jurisdiction to review the defendant's otherwise unpreserved claim.

KEY QUOTATIONS

“the trial court abandoned the role of a neutral arbiter and assumed the function of an interested party, thereby creating a specter of bias that requires reversal” ([*2])

“negotiated and entered into a [plea] agreement with a codefendant requiring that individual to testify against defendant in exchange for a more favorable sentence” ([*2])

FACTUAL BACKGROUND

A codefendant testified against Greenspan at his jury trial for second-degree murder. The People had agreed to recommend a determinate sentence of two to seven years for the codefendant's guilty plea to attempted robbery in the second degree. The County Court separately promised the codefendant probation in exchange for her testimony against Greenspan. Greenspan was convicted of second-degree murder.

PROCEDURAL HISTORY

Greenspan was charged with second-degree murder and convicted following a jury trial at which a codefendant testified against him. He appealed, arguing that the verdict was against the weight of the evidence and that the trial court violated his due process right to a fair trial by entering into a sentencing agreement with the testifying codefendant. The Appellate Division rejected the weight-of-the-evidence claim but reached the unpreserved plea-agreement issue in the interest of justice and reversed for a new trial before a different Justice.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgment was reversed as a matter of discretion in the interest of justice, and the matter was remitted to the County Court, Suffolk County, for a new trial before a different Justice.

CASES CITED

- People v. Danielson, 9 NY3d 342
- People v. Mateo, 2 NY3d 383, 410
- People v. Bleakley, 69 NY2d 490, 495
- People v. Romero, 7 NY3d 633
- People v. Towns, 33 NY3d 326, 328
- People v. Lawhorn, 178 AD3d 1466

OPINION

PER CURIAM.

People v Greenspan (2020 NY Slip Op 04408) People v Greenspan 2020 NY Slip Op 04408 Decided on August 5, 2020 Appellate Division, Second 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 August 5, 2020 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department JOHN M. LEVENTHAL, J.P.

JOSEPH J. MALTESE COLLEEN D. DUFFY LINDA CHRISTOPHER, JJ. 2017-06063 (Ind. No. 2758/15) [*1]The People of the State of New York, respondent, vDaniel Greenspan, appellant. Law Offices of Joel B. Rudin, P.C., New York, NY, for appellant. Timothy D. Sini, District Attorney, Riverhead, NY (Rosalind C. Gray and Guy Arcidionocono of counsel), for respondent. DECISION & ORDER Appeal by the defendant from a judgment of the County Court, Suffolk County (William J. Condon, J.), rendered May 11, 2017, convicting him of murder in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is reversed, as a matter of discretion in the interest of justice, and the matter is remitted to the County Court, Suffolk County, for a new trial before a different Justice. The defendant was charged with murder in the second degree.

After a jury trial, at which a codefendant testified against the defendant, the defendant was convicted of that offense. The defendant contends that the verdict was against the weight of the evidence. In fulfilling our responsibility to conduct an independent review of the weight of the

evidence (see CPL 470.15[5]; *People v Danielson*, 9 NY3d 342), we nevertheless accord great deference to the jury's opportunity to view the witnesses, hear the testimony, and observe demeanor (see *People v Mateo*, 2 NY3d 383, 410; *People v Bleakley*, 69 NY2d 490, 495).

Upon reviewing the record here, we are satisfied that the verdict of guilt was not against the weight of the evidence (see *People v Romero*, 7 NY3d 633). The defendant also contends that he was deprived of his due process right to a fair trial by the County Court's act of entering into a plea agreement with the testifying codefendant.

The court's agreement with the codefendant was made in conjunction with a cooperation agreement reached between the codefendant and the People. The codefendant had been charged with, *inter alia*, murder in the second degree.

The People had promised to recommend a determinate sentence of imprisonment between two and seven years in exchange for the codefendant's guilty plea to the reduced charge of attempted robbery in the second degree. However, the court promised the codefendant a sentence of only probation in exchange for her testimony against the defendant.

Although the defendant failed to preserve this issue for appellate review (see CPL 470.05[2]), we nevertheless reach it in the exercise of our interest of justice jurisdiction. We agree with the defendant that, under the circumstances here, the County Court [*2]committed reversible error when it "negotiated and entered into a [plea] agreement with a codefendant requiring that individual to testify against defendant in exchange for a more favorable sentence" (*People v Towns*, 33 NY3d 326, 328; see *People v Lawhorn*, 178 AD3d 1466).

By doing so, "the trial court abandoned the role of a neutral arbiter and assumed the function of an interested party, thereby creating a specter of bias that requires reversal" (*People v Towns*, 33 NY3d at 328; see *People v Lawhorn*, 178 AD3d 1466).

In light of our determination, we need not reach the defendant's remaining contentions. LEVENTHAL, J.P., MALTESE, DUFFY and CHRISTOPHER, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court