

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

People v. Lee

2021 NY Slip Op 06774 (N.Y. Ct. App. 2021) · No. Appeal No. 14751; Case No. 2019-1938; Ind. No. 1900/16 ·
Decided December 2, 2021

SUMMARY

The Appellate Division, First Department unanimously affirmed Donald Lee's convictions for first-degree burglary, second-degree robbery, second-degree assault, and fourth-degree grand larceny, along with his aggregate 14-year sentence. The court upheld the denial of a midtrial competency examination, found that Lee waived or forfeited his right to be present during part of the trial, and approved lay opinion identification testimony concerning surveillance video. The court also rejected challenges to the prosecutor's summation and found no basis to reduce the sentence.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Gische, J.P.; Kapnick, J.; Kern, J.; Gesmer, J.; Kennedy, J.
JURISDICTION	New York
DECIDED	December 2, 2021
DOCKET	Appeal No. 14751; Case No. 2019-1938; Ind. No. 1900/16
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of the Supreme Court, New York County, entered after a jury trial, convicting him of burglary in the first degree, robbery in the second degree, assault in the second degree, and grand larceny in the fourth degree, and sentencing him to an aggregate term of 14 years.
STANDARD OF REVIEW	Abuse of discretion for the competency-examination request, admission of lay opinion identification testimony, and mistrial motion; preservation rules for unobjected-to or inadequately objected-to summation claims; independent review in the interest of justice where applicable.
PRECEDENTIAL VALUE	Published intermediate appellate decision; precedential under New York law.

PARTIES

Donald Lee, Defendant-Appellant v. The People of the State of New York, Respondent

TOPICS

criminal procedure

evidence

appellate procedure

preservation of error

standard of review

PRACTICE AREAS

criminal law

criminal procedure

evidence

appellate practice

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by denying defendant's midtrial request for a new competency examination.
2. Whether defendant waived or forfeited his right to be present during part of the trial by refusing to return to the courtroom after being advised that the trial would continue in his absence.
3. Whether the trial court properly permitted two police officers to provide lay opinion testimony identifying defendant in a surveillance video.
4. Whether prosecutorial summation required a mistrial or reversal.
5. Whether defendant's unpreserved summation claims warranted review in the interest of justice or required sentence reduction.

HOLDINGS

1. The trial court providently exercised its discretion in denying defendant's request for a new competency examination because defendant's competency had been established before trial and no evidence showed a change in his condition requiring another examination.
2. Defendant waived or forfeited his right to be present during the portion of trial testimony conducted after he refused to return to the courtroom, where he had been advised that the trial would continue in his absence and counsel confirmed that he did not want to return that day.
3. The trial court properly exercised its discretion in permitting two officers to give lay opinion testimony identifying defendant as the person depicted in the surveillance video.
4. The trial court properly denied defendant's mistrial motion because the curative instructions given or offered in response to the challenged summation remarks were sufficient to avoid prejudice.

KEY QUOTATIONS

*"This testimony "served to aid the jury in making an independent assessment regarding whether the man in the [video] was indeed the defendant"" (*1)*

*"The curative instructions that the court provided or offered to provide, in each instance, were sufficient to avoid any prejudice." (*2)*

FACTUAL BACKGROUND

Defendant was convicted after a jury trial of burglary, robbery, assault, and grand larceny and received an aggregate 14-year sentence. He had a psychiatric illness and experienced a courtroom outburst, but the record showed that he understood the proceedings and could assist in his defense; his competency had previously been established in CPL article 730 proceedings. After being removed from the courtroom, defendant told counsel that he did not want to return that day, while the trial continued and defendant returned the following day. Officers identified defendant as the person depicted in a poor-quality surveillance video, and the prosecution made two challenged portions of summation.

PROCEDURAL HISTORY

The Supreme Court, New York County, rendered judgment on March 1, 2019, following a jury trial. During trial, the court denied a midtrial request for a new competency examination, removed defendant from the courtroom after an outburst, permitted officers to give lay opinion identification testimony concerning a surveillance video, and denied a mistrial motion based on prosecutorial summation. The Appellate Division unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- Pate v. Robinson, 383 U.S. 375 (1966)
- People v. Tortorici, 92 N.Y.2d 757, 766 (1999), cert. denied, 528 U.S. 834 (1999)
- People v. Morgan, 87 N.Y.2d 878, 879-880 (1995)
- People v. Espinal, 123 A.D.3d 475, 476 (1st Dep't 2014), lv. denied, 25 N.Y.3d 1163 (2015)
- People v. McCray, 165 A.D.3d 595, 596 (2018), lv. denied, 32 N.Y.3d 1175 (2019)
- People v. Sanchez, 65 N.Y.2d 436 (1985)
- People v. Collins, 29 A.D.3d 434 (2006)
- People v. Russell, 79 N.Y.2d 1024, 1025 (1992)
- People v. Boyd, 151 A.D.3d 641 (2017), lv. denied, 29 N.Y.3d 1124 (2017)
- People v. Sanchez, 21 N.Y.3d 216, 225 (2013)
- People v. Overlee, 236 A.D.2d 133 (1st Dep't 1997), lv. denied, 91 N.Y.2d 976 (1998)
- People v. D'Alessandro, 184 A.D.2d 114, 118-119 (1st Dep't 1992), lv. denied, 81 N.Y.2d 884 (1993)