

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

People v. Brooks

2021 NY Slip Op 07010 (N.Y. Ct. App. 2021) · No. 2017-02582 · Decided December 15, 2021

SUMMARY

The Appellate Division, Second Department affirmed Edward Brooks's convictions for criminal sale and criminal possession of a controlled substance in the third degree. The court held that although the trial court failed to conduct the required inquiry before allowing Brooks to represent himself at the suppression hearing, a new hearing was unnecessary because the People did not rely on the cell-phone evidence at trial. The court also rejected challenges concerning the weight of the evidence, ineffective assistance of counsel, Brooks's absence during portions of trial, and shackling before the jury.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Leonard B. Austin, J.P.; Robert J. Miller, J.; Paul Wooten, J.; Joseph A. Zayas, J.
JURISDICTION	New York
DECIDED	December 15, 2021
DOCKET	2017-02582
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment convicting him, after a jury trial, of two counts of criminal sale of a controlled substance in the third degree and two counts of criminal possession of a controlled substance in the third degree. The appeal also challenged the denial of suppression of physical evidence following a suppression hearing conducted under a stipulation in lieu of motions.
STANDARD OF REVIEW	The court independently reviewed the weight of the evidence under CPL 470.15(5), while according great deference to the jury's opportunity to view witnesses, hear testimony, and observe demeanor. The court also reviewed the ineffective-assistance claim under federal and state constitutional standards and reviewed the trial court's conduct of portions of the trial in the defendant's absence for abuse of discretion.

PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Edward Brooks v. The People of the State of New York

TOPICS

right to counsel suppression of evidence appellate procedure criminal procedure ineffective assistance

PRACTICE AREAS

criminal procedure appellate criminal law evidence

QUESTIONS PRESENTED

1. Whether the failure to conduct the required inquiry before permitting Brooks to represent himself at the suppression hearing required a new suppression hearing.
2. Whether the verdict was against the weight of the evidence.
3. Whether Brooks received effective assistance of counsel under federal and state constitutional standards.
4. Whether the trial court improperly conducted portions of the trial in Brooks's absence.
5. Whether the use of handcuffs in the presence of the jury violated Brooks's constitutional rights and warranted appellate relief despite the lack of preservation.

HOLDINGS

1. A court must determine that a defendant's waiver of the right to counsel is competent, intelligent, and voluntary, after a searching inquiry into the dangers and disadvantages of self-representation. The Supreme Court failed to conduct that inquiry before allowing Brooks to represent himself, but the error did not require a new suppression hearing because the People did not rely at trial on evidence concerning the cell phone and the suppression hearing therefore could not have affected the trial result.
2. The verdict convicting Brooks was not against the weight of the evidence.
3. Brooks received effective assistance of counsel under both federal and state constitutional standards.
4. The Supreme Court providently exercised its discretion in conducting portions of the trial in Brooks's absence because his repeated disruptive conduct, despite admonitions, permitted an inference that he waived his right to be present.
5. The claim that Brooks's constitutional rights were violated by being handcuffed in the jury's presence was unpreserved, and the court declined to review it in the exercise of its interest-of-justice jurisdiction.

KEY QUOTATIONS

“A court must determine that a defendant's waiver of the right to counsel is made competently, intelligently, and voluntarily before allowing that defendant to represent himself or herself” ([*1])

“must undertake a 'searching inquiry' designed to 'insur[e] that a defendant [is] aware of the dangers and disadvantages of proceeding without counsel'” ([*1])

*“a waiver of the right to be present at a criminal trial may be inferred from certain conduct engaged in by the defendant after the trial has commenced” ([*2])*

*“a defendant who engages in disruptive behavior during a trial may be held to have, in effect, waived his [or her] right to be present” ([*2])*

FACTUAL BACKGROUND

Brooks was indicted on drug charges arising from the alleged sale of heroin and cocaine to an undercover detective. A cell phone recovered from Brooks when he was arrested allegedly had been used to arrange the sale. The phone was not introduced or relied upon by the People at trial. Brooks engaged in repeated disruptive conduct during trial despite the court's admonitions, and portions of the trial were conducted in his absence.

PROCEDURAL HISTORY

The Supreme Court, Nassau County, denied suppression of a cell phone recovered from Brooks at arrest, finding that the phone was recovered incident to a lawful arrest. Brooks was permitted to represent himself at the suppression hearing. After trial, the court entered judgment on the jury's guilty verdicts and imposed sentence. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Crampe, 17 NY3d 469, 481
- People v. Providence, 2 NY3d 579, 582
- People v. Lemmo, 192 AD3d 1143
- People v. Wardlaw, 6 NY3d 556, 559-560
- People v. Rodriguez, 158 AD3d 143, 153-154
- People v. Costan, 169 AD3d 820, 822
- People v. Danielson, 9 NY3d 342, 348
- People v. Mateo, 2 NY3d 383, 410
- People v. Bleakley, 69 NY2d 490, 495
- People v. Romero, 7 NY3d 633
- Strickland v. Washington, 466 US 668, 688
- People v. Benevento, 91 NY2d 708, 712
- People v. Baldi, 54 NY2d 137, 147
- People v. Parker, 57 NY2d 136, 139
- People v. Connor, 137 AD2d 546, 549
- People v. Ramos, 179 AD3d 842, 843-844

- People v. Paige, 134 AD3d 1048, 1052
- People v. Woods, 138 AD3d 1153, 1154

OPINION

PER CURIAM.

People v Brooks (2021 NY Slip Op 07010) People v Brooks 2021 NY Slip Op 07010 Decided on December 15, 2021 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 December 15, 2021 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department LEONARD B. AUSTIN, J.P.

ROBERT J. MILLER PAUL WOOTEN JOSEPH A. ZAYAS, JJ. 2017-02582 (Ind. No. 1229/15) [*1]The People of the State of New York, respondent, vEdward Brooks, appellant. Patrick Michael Megaro, Forest Hills, NY, for appellant. Joyce A. Smith, Acting District Attorney, Mineola, NY (Tammy J. Smiley and Hilda Mortensen of counsel), for respondent. DECISION & ORDER Appeal by the defendant from a judgment of the Supreme Court, Nassau County (Jerald S. Carter, J.), rendered February 7, 2017, convicting him of criminal sale of a controlled substance in the third degree (two counts) and criminal possession of a controlled substance in the third degree (two counts), upon a jury verdict, and imposing sentence.

The appeal brings up for review the denial, after a hearing pursuant to a stipulation in lieu of motions (Patricia A. Harrington, J.), of the suppression of physical evidence. ORDERED that the judgment is affirmed. The defendant was indicted on various drug charges arising from the alleged sale of heroin and cocaine to an undercover detective. A cell phone recovered from the defendant when he was arrested allegedly was used to arrange the drug sale.

Following a suppression hearing, at which the defendant was permitted to represent himself, the Supreme Court denied suppression of the cell phone, finding that it was recovered incident to a lawful arrest. After a jury trial, the defendant was convicted of two counts of criminal sale of a controlled substance in the third degree and two counts of criminal possession of a controlled substance in the third degree.

A court must determine that a defendant's waiver of the right to counsel is made competently, intelligently, and voluntarily before allowing that defendant to represent himself or herself (see People v Crampe, 17 NY3d 469, 481).

In order to make that evaluation, the court "must undertake a 'searching inquiry' designed to 'insur[e] that a defendant [is] aware of the dangers and disadvantages of proceeding without counsel'" (id. at 481, quoting People v Providence, 2 NY3d 579, 582).

Here, the Supreme Court failed to conduct the requisite inquiry before allowing the defendant to represent himself during the suppression hearing (see *People v Lemmo*, 192 AD3d 1143). However, under the circumstances of this case, a new suppression hearing is not warranted. Since the People did not rely on any evidence pertaining to the cell phone at trial, the result at trial could not have been affected by the suppression hearing (see *People v Wardlaw*, 6 NY3d 556, 559-560; *People v Rodriguez*, 158 AD3d 143, 153-154; cf. *People v Costan*, 169 AD3d 820, 822).

Contrary to the defendant's contention, the verdict was not against the weight of the [*2]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, 348), 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 CPL 470.15[5]; *People v Romero*, 7 NY3d 633). Also contrary to the defendant's contention, the record as a whole demonstrates that he received the effective assistance of counsel under both the federal and state constitutional standards (see *Strickland v Washington*, 466 US 668, 688; *People v Benevento*, 91 NY2d 708, 712; *People v Baldi*, 54 NY2d 137, 147).

Furthermore, contrary to the defendant's contention, the Supreme Court providently exercised its discretion in conducting portions of the trial in his absence. "[A] waiver of the right to be present at a criminal trial may be inferred from certain conduct engaged in by the defendant after the trial has commenced" (*People v Parker*, 57 NY2d 136, 139). "[A] defendant who engages in disruptive behavior during a trial may be held to have, in effect, waived his [or her] right to be present" (*People v Connor*, 137 AD2d 546, 549).

Here, a waiver of the defendant's right to be present may be inferred from his repeated disruptive conduct despite the court's admonitions (see *People v Ramos*, 179 AD3d 842, 843-844; *People v Paige*, 134 AD3d 1048, 1052).

The defendant's contention that the Supreme Court violated his constitutional rights by having him handcuffed in the presence of the jury is unpreserved for appellate review (see *People v Woods*, 138 AD3d 1153, 1154), and we decline to reach that issue in the exercise of our interest of justice jurisdiction. AUSTIN, J.P., MILLER, WOOTEN and ZAYAS, JJ., concur.

ENTER: Maria T. Fasulo Clerk of the Court