

NEW YORK COURT OF APPEALS

People v. Lyxon Chery

28 N.Y.3d 139, 65 N.E.3d 684 (N.Y. 2016) · No. No. 159 · Decided November 1, 2016

SUMMARY

The New York Court of Appeals held that the prosecution could impeach the defendant with significant omissions from his spontaneous, postdetention statement to police when those omissions conflicted with his trial testimony. The court affirmed the judgment, concluding that the impeachment was permissible under New York evidentiary law and that any error concerning additional questioning was unpreserved and harmless.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Chief Judge DiFiore; Judge Pigott; Judge Abdus-Salaam; Judge Rivera; Judge Stein; Judge Fahey; Judge Garcia
JURISDICTION	New York
DECIDED	November 1, 2016
DOCKET	No. 159
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment following convictions for robbery in the first degree and two counts of robbery in the second degree. The Appellate Division, First Department, affirmed, and the Court of Appeals granted leave to appeal.
STANDARD OF REVIEW	The court reviewed the admissibility of the impeachment evidence under New York evidentiary law and considered whether any error created a significant probability that the verdict would have been different.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Lyxon Chery v. The People

TOPICS

- impeachment
- evidence
- criminal procedure

PRACTICE AREAS

criminal procedure

evidence

QUESTIONS PRESENTED

1. Whether the prosecution could impeach defendant's trial testimony with significant omissions from his spontaneous, pre-Miranda statement to police.
2. Whether allowing the impeachment was permissible under New York evidentiary law despite the general rule excluding evidence of a defendant's pretrial silence.
3. Whether any error in permitting the impeachment required reversal of defendant's convictions.

HOLDINGS

1. When a defendant voluntarily provides a version of events in a spontaneous statement to police, and it would be unnatural to omit materially exculpatory facts later asserted at trial, the omissions may be used to impeach the defendant's credibility.
2. Because defendant made a spontaneous statement rather than remaining wholly silent, the prosecution's use of significant omissions for impeachment presented a question of state evidentiary law rather than a violation of defendant's constitutional right to due process or to remain silent.
3. Even assuming error in permitting some questioning beyond the proper scope of the trial court's ruling, there was no significant probability that the verdict would have been different, and the convictions therefore were affirmed.

KEY QUOTATIONS

“As we have recently restated, “it is a well-established principle of state evidentiary law that evidence of a defendant’s pretrial silence is generally inadmissible”” (28 N.Y.3d at 144)

“Here, defendant elected to provide some explanation of what happened at the scene, and it was unnatural to have omitted the significantly more favorable version of events to which he testified at trial—that complainant had assaulted him.” (28 N.Y.3d at 145)

FACTUAL BACKGROUND

Shortly after midnight, defendant and another man attacked a grocery-store employee while the employee was closing the store, and \$215 was taken. When police arrived, an officer saw defendant holding a sharp metal object, observed a wooden board, and saw that the complainant had injuries; police later recovered an envelope containing \$215 from defendant. Defendant made a spontaneous statement accusing the complainant of kicking his bicycle and asserting that the complainant should also be arrested, but at trial defendant gave a more favorable account in which the complainant attacked him with a wooden board.

PROCEDURAL HISTORY

The trial court denied defendant's motion to suppress his spontaneous statement to the responding officer. At trial, the court permitted the prosecution to impeach defendant with omissions from that statement. The jury

convicted defendant, the Appellate Division affirmed in 127 A.D.3d 533 (1st Dept. 2015), and the Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Savage, 50 N.Y.2d 673 (1980)
- People v. Williams, 25 N.Y.3d 185 (2015)
- People v. Conyers, 52 N.Y.2d 454 (1981)
- Jenkins v. Anderson, 447 U.S. 231 (1980)
- Doyle v. Ohio, 426 U.S. 610 (1976)
- People v. Crimmins, 36 N.Y.2d 230 (1975)
- 127 A.D.3d 533 (1st Dept. 2015)
- 25 N.Y.3d 1199 (2015)