

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

People v. Brown

2021 NY Slip Op 03633 (N.Y. Ct. App. 2021) · No. 110743 · Decided June 10, 2021

SUMMARY

The Appellate Division, Third Department affirmed David Brown's conviction for second-degree burglary on an accessorial-liability theory. The court held that the evidence was legally sufficient and supported the verdict under the weight-of-the-evidence standard, despite the absence of proof that Brown physically entered the apartment. The court also upheld admission of recorded jail telephone calls and rejected unpreserved prosecutorial-misconduct and ineffective-assistance claims.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Pritzker, J.; Garry, P.J.; Egan Jr., J.; Aarons, J.; Reynolds Fitzgerald, J.
JURISDICTION	New York
DECIDED	June 10, 2021
DOCKET	110743
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of Supreme Court, Albany County, entered after a jury verdict convicting him of burglary in the second degree and sentencing him to 3½ years in prison with five years of postrelease supervision.
STANDARD OF REVIEW	For legal sufficiency, the court viewed the evidence in the light most favorable to the People and asked whether any valid line of reasoning and permissible inferences could lead a rational person to find every element proved beyond a reasonable doubt. For weight of the evidence, the court independently reviewed the credible evidence in a neutral light while according deference to the jury's credibility determinations. Unpreserved prosecutorial-misconduct claims were reviewed only insofar as the court elected to address them in the alternative.

PRECEDENTIAL VALUE	Published New York Appellate Division opinion; precedential within the applicable New York appellate hierarchy.
PARTIES	David Brown v. The People of the State of New York

TOPICS

criminal procedure evidence appellate procedure preservation of error prosecutorial misconduct

PRACTICE AREAS

criminal law criminal procedure evidence appellate practice

QUESTIONS PRESENTED

1. Whether the evidence was legally sufficient to support defendant's conviction for second-degree burglary on an accessorial-liability theory despite the absence of proof that defendant physically entered the apartment.
2. Whether the verdict finding defendant guilty of second-degree burglary was against the weight of the evidence.
3. Whether recorded telephone calls defendant made from jail were admissible when the recording system warned that calls were subject to monitoring and recording.
4. Whether the prosecutor's summation comments constituted prosecutorial misconduct requiring reversal despite the absence of a trial objection.
5. Whether trial counsel was ineffective for failing to object to the prosecutor's summation comments.

HOLDINGS

1. The evidence was legally sufficient to establish defendant's criminal liability for second-degree burglary as an accessory, including the requisite intent to steal, even though no evidence showed that defendant physically entered the apartment.
2. The verdict was not against the weight of the evidence.
3. The recorded telephone calls were properly admitted because defendant was warned that calls were subject to monitoring and recording and therefore had no reasonable expectation of privacy in their contents.
4. Defendant's prosecutorial-misconduct claim was unpreserved because trial counsel did not object. In the alternative, the challenged comments were fair comment on the evidence, and any improper remarks were not sufficiently pervasive or flagrant to require reversal.
5. Defendant's ineffective-assistance claim failed because objections to the challenged summation comments would have had little or no chance of success.

KEY QUOTATIONS

*“When considering a challenge to the legal sufficiency of the evidence, [this Court must] view the evidence in the light most favorable to the People and evaluate whether there is any valid line of reasoning and permissible inferences which could lead a rational person to the conclusion reached by the jury on the basis of the evidence at trial and as a matter of law satisfy the proof and burden requirements for every element of the crime charged” (*1)*

*“Given these details, a valid line of reasoning and permissible inferences could lead a rational person to conclude that defendant had the requisite intent to steal the television, permitting the jury to find him guilty even in the absence of evidence demonstrating that he physically entered the apartment at 216 Ontario Street” (*4)*

*“Thus, it is clear from the record that defendant was aware that the phone calls were being recorded and, as such, he had no reasonable expectation of privacy over them” (*5)*

FACTUAL BACKGROUND

Three occupants of an Albany apartment heard footsteps near their bedrooms around the time of the burglary. Surveillance video showed defendant and his companion walking toward the apartment, later leaving with defendant carrying a television, and temporarily hiding the television when a car approached. Recorded jail calls included defendant's statements that he knew better, recognized the apartment as his companion's "mark," knew the television was stolen, and received payment for helping. Defendant testified that he believed the television belonged to his companion and denied knowing that the companion was committing a crime.

PROCEDURAL HISTORY

Following a jury trial, Supreme Court convicted defendant of burglary in the second degree based on the theft of a television from an Albany apartment. Supreme Court sentenced defendant to 3½ years' imprisonment and five years of postrelease supervision. Defendant appealed, challenging the legal sufficiency and weight of the evidence, admission of recorded jail calls, prosecutorial comments during summation, and the effectiveness of trial counsel.

DISPOSITION

affirmed

CASES CITED

- People v. Hernandez, 180 A.D.3d 1234, 1235 (2020)
- People v. Nunes, 168 A.D.3d 1187, 1187-88 (2019)
- People v. Maeweather, 172 A.D.3d 1646, 1647 (2019)
- People v. Saylor, 173 A.D.3d 1489, 1490 (2019)
- People v. Strauss, 155 A.D.3d 1317, 1318-19 (2017)
- People v. Chapman, 182 A.D.3d 862, 864 (2020)
- People v. La Furno, 104 A.D.2d 1008, 1008 (1984)

- People v. Spencer, 152 A.D.3d 863, 866 (2017)
- People v. Shamsuddin, 167 A.D.3d 1334, 1335 (2018)
- People v. Gage, 259 A.D.2d 837, 838-39 (1999)
- People v. McDonald, 257 A.D.2d 695, 696 (1999)
- People v. Porter, 184 A.D.3d 1014, 1017-18 (2020)
- People v. Walker, 191 A.D.3d 1154, 1158 (2021)
- People v. Diaz, 33 N.Y.3d 92, 95-100 (2019), cert. denied, 140 S. Ct. 394 (2019)
- People v. Russ, 162 A.D.3d 1306, 1306 (2018)
- People v. Johnson, 27 N.Y.3d 199, 206 (2016)
- People v. Andrade, 172 A.D.3d 1547, 1553-54 (2019)
- People v. Johnson, 183 A.D.3d 77, 90 (2020)
- People v. Johnson, 151 A.D.3d 1462, 1466 (2017)
- People v. Caban, 5 N.Y.3d 143, 152 (2005)