

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

People v. Williams

2021 NY Slip Op 00124 (App. Div. 2021) · No. Ind. No. 4675/13; Appeal No. 12854; Case No. 2016-1213 ·
Decided January 12, 2021

SUMMARY

The Appellate Division, First Department, unanimously affirmed Glenn Williams's convictions for first-degree robbery, first-degree strangulation, and second-degree assault, and his aggregate 20-year sentence. The court held that challenges to the trial court's responses to jury notes were unpreserved and, alternatively, that the responses were meaningful; it also rejected claims concerning jury-note disclosure and alleged instructional error.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Acosta, P.J.; Webber, J.; González, J.; Scarpulla, J.
JURISDICTION	New York
DECIDED	January 12, 2021
DOCKET	Ind. No. 4675/13; Appeal No. 12854; Case No. 2016-1213
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of the Supreme Court, New York County, entered after a jury trial and convicting him of robbery in the first degree, strangulation in the first degree, and assault in the second degree.
STANDARD OF REVIEW	Unpreserved claims were not reviewed in the interest of justice. The adequacy of the trial court's responses to jury notes was reviewed under the meaningful-response standard. Any instructional error was assessed for harmlessness beyond a reasonable doubt.
PRECEDENTIAL VALUE	published
PARTIES	Glenn Williams v. The People of the State of New York

TOPICS

jury instructions

criminal procedure

preservation of error

harmless error

appellate procedure

PRACTICE AREAS

criminal procedure

appellate procedure

criminal law

QUESTIONS PRESENTED

1. Whether defendant preserved his challenges to the trial court's responses to the jury notes.
2. Whether the trial court provided meaningful responses to the jury's requests for rereading and clarification of the charges.
3. Whether the trial court was required to correct an alleged jury misapprehension concerning the intent and serious-physical-injury elements of first-degree strangulation.
4. Whether the alleged instructional error was harmless.
5. Whether the trial court committed a mode-of-proceedings error by failing to convey the full contents of a jury note to defense counsel.

HOLDINGS

1. Defendant's challenges to the trial court's responses to the jury notes were unpreserved because defense counsel agreed with the proposed responses and did not except to the supplemental instructions as given; the court declined to review the claims in the interest of justice.
2. The trial court provided meaningful responses to the jury's notes by rereading the relevant charges and definitions, explaining the governing legal standards, and directing the jury to apply those standards to the facts of the case without directing how the facts should be evaluated.
3. The court rejected defendant's argument that the trial court should have corrected an alleged jury misapprehension concerning whether first-degree strangulation required an intent to cause serious physical injury and whether serious physical injury had to result; the claim was improperly raised for the first time in the reply brief, and any error was harmless in any event.
4. The trial court did not commit a mode-of-proceedings error because the record showed that defense counsel read the jury note before the court read it into the record.

KEY QUOTATIONS

"Such responses, which laid out the applicable legal principles, were meaningful." (*1)

"The court was not to direct how the facts were to be evaluated, or required to "marshal the evidence or explain the parties' theories and proof"" (*1)

FACTUAL BACKGROUND

After a jury trial, defendant was convicted of robbery in the first degree, strangulation in the first degree, and assault in the second degree. The jury sent several notes requesting rereading or clarification of the charges, including whether strangulation to the point of unconsciousness established serious physical injury through a

substantial risk of death. The trial court reread the relevant charges, directed the jury to decide whether the statutory standards were met beyond a reasonable doubt based on the facts of the case, and instructed the jury to reach the second-degree strangulation count only if it acquitted defendant of first-degree strangulation.

PROCEDURAL HISTORY

The Supreme Court, New York County, rendered judgment on February 5, 2015, later amended on August 17, 2015, and sentenced defendant as a second violent felony offender to an aggregate term of 20 years. The Appellate Division unanimously affirmed, holding that defendant's challenges to the court's responses to jury notes were unpreserved and, alternatively, that the responses were meaningful; it also rejected the remaining claims.

DISPOSITION

affirmed

CASES CITED

- People v Davis, 223 AD2d 376, 377 [1st Dept 1996], lv denied 88 NY2d 846 [1996]
- People v Malloy, 55 NY2d 296 [1982], cert denied 459 US 847 [1982]
- People v McTiernan, 176 AD3d 484, 485 [1st Dept 2019], lv denied 34 NY3d 1161 [2020]
- People v Batista, 209 AD2d 326, 327 [1st Dept 1994]
- People v Rodriguez, 199 AD2d 72, 72 [1st Dept 1993]
- People v Crimmins, 36 NY2d 230 [1975]
- People v Suyoung Yun, 140 AD3d 402, 403 [1st Dept 2016], lv denied 28 NY3d 937 [2016]
- People v O'Rama, 78 NY2d 270, 279 [1991]

OPINION

PER CURIAM.

People v Williams (2021 NY Slip Op 00124) People v Williams 2021 NY Slip Op 00124 Decided on January 12, 2021 Appellate Division, First 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 and Entered: January 12, 2021 Before: Acosta, P.J., Webber, González, Scarpulla, JJ. Ind No. 4675/13 4675/13 Appeal No. 12854 Case No. 2016-1213 [*1]The People of the State of New York, Respondent, vGlenn Williams, Defendant-Appellant.

Janet E. Sabel, The Legal Aid Society, New York (Jeffrey Dellheim of counsel), for appellant. Cyrus R. Vane, Jr., District Attorney, New York (Victoria Muth of counsel), for respondent. Judgment, Supreme Court, New York County (Ruth Pickholz, J.), rendered February 5, 2015, as amended August 17, 2015, convicting defendant, after a jury trial, of robbery in the first degree,

strangulation in the first degree and assault in the second degree, and sentencing him, as a second violent felony offender, to an aggregate term of 20 years, unanimously affirmed.

Defendant's challenges to the court's responses to jury notes are unpreserved, and we decline to review them in the interest of justice. Defense counsel agreed with the court's proposed responses, and did not except to the supplemental instructions as given (see *People v Davis*, 223 AD2d 376, 377 [1st Dept 1996], lv denied 88 NY2d 846 [1996]).

As an alternative holding, we find that the court provided meaningful responses (see *People v Malloy*, 55 NY2d 296 [1982], cert denied 459 US 847 [1982]). The court's rereading of the relevant charges and definitions directly and adequately addressed the jury's simple requests in the first four and seventh notes.

The court also meaningfully responded to the fifth and sixth notes seeking clarification on whether strangulation to the point of unconsciousness proved a "serious physical injury" through creation of a "substantial risk of death" (see Penal Law § 10.00 [10]).

The questions appear to stem from jury confusion created by the People's expert's testimony that choking to the point of unconsciousness necessarily leads to a "substantial risk of death," which is inconsistent with the statutory scheme of first- and second-degree strangulation (see Penal Law §§ 121.12, 121.13).

In response to these notes, the court reread the charges; instructed the jury that it was not to "talk in generalities," but to determine only "whether in this case the standards have been met beyond a reasonable doubt" based on "the facts as you have seen them"; and made clear that the jurors were to reach the second-degree count only if they found defendant not guilty of first-degree strangulation.

Such responses, which laid out the applicable legal principles, were meaningful. The court was not to direct how the facts were to be evaluated (see *People v McTiernan*, 176 AD3d 484, 485 [1st Dept 2019], lv denied 34 NY3d 1161 [2020]), or required to "marshal the evidence or explain the parties' theories and proof" (*People v Batista*, 209 AD2d 326, 327 [1st Dept 1994], citing *People v Rodriguez*, 199 AD2d 72, 72 [1st Dept 1993]).

To the extent defendant argues that the court should have corrected jury misapprehension, reflected in the fifth note, that first-degree strangulation required an intent to cause serious physical injury but not necessarily that it caused serious physical injury, we reject it as being raised for the first time in the reply brief.

In any event, any error was harmless (see *People v Crimmins*, 36 NY2d 230 [1975]). The evidence established beyond a reasonable doubt that defendant, by choking the victim to unconsciousness,

caused a "serious physical injury" by creating a "substantial risk of death" (see *People v Suyoung Yun*, 140 AD3d 402, 403 [1st Dept 2016], lv denied 28 NY3d 937 [2016]).

Defendant's argument that the court committed a "mode of proceedings" error by failing to convey to defense counsel the full contents of one of the jury notes (see *People v O'Rama*, 78 NY2d 270, 279 [1991]) is contradicted by the record reflecting that defense counsel read the note before the court read it into the record. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: January 12, 2021