

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

People v. Pierre

2020 NY Slip Op 03986 (N.Y. Ct. App. 2020) · No. 11824 · Decided July 16, 2020

SUMMARY

The Appellate Division, First Department, unanimously affirmed Matthew Pierre's convictions for assault in the second degree, criminal mischief in the third degree, and auto stripping in the third degree, as well as his aggregate sentence of 9 to 11 years. The court held that the trial court properly modified its Sandoval ruling, but erred in allowing prior convictions to be considered as affirmative evidence of guilt; it found the errors harmless and rejected the remaining prosecutorial misconduct and ineffective assistance claims.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                    |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New York, Appellate Division, First Department                                                                                                                                                                       |
| WRITING FOR THE COURT | Gische, J.P.; Kapnick, J.; Webber, J.; Kern, J.; González, J.                                                                                                                                                                                      |
| JURISDICTION          | New York                                                                                                                                                                                                                                           |
| DECIDED               | July 16, 2020                                                                                                                                                                                                                                      |
| DOCKET                | 11824                                                                                                                                                                                                                                              |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                           |
| PROCEDURAL POSTURE    | Defendant appealed from a judgment of Supreme Court, New York County, entered after a jury trial, convicting him of assault in the second degree, criminal mischief in the third degree, and auto stripping in the third degree.                   |
| STANDARD OF REVIEW    | Abuse of discretion for the trial court's Sandoval ruling; harmless-error review for the evidentiary and prosecutorial remarks issues; and review of ineffective-assistance claims for whether counsel's conduct was unreasonable and prejudicial. |
| PRECEDENTIAL VALUE    | Published intermediate appellate opinion                                                                                                                                                                                                           |
| PARTIES               | Matthew Pierre, Defendant-Appellant v. The People of the State of New York, Respondent                                                                                                                                                             |

TOPICS

evidence

impeachment

harmless error

preservation of error

ineffective assistance

## PRACTICE AREAS

criminal law

criminal procedure

evidence

appellate practice

## QUESTIONS PRESENTED

1. Whether the trial court properly modified its Sandoval ruling after defendant opened the door by testifying that he was not a troublemaker.
2. Whether the trial court improperly permitted the jury to consider defendant's prior convictions as affirmative evidence of guilt relevant to his mental state and justification defense.
3. Whether the prosecutor's summation remark required reversal despite defendant's failure to preserve the objection.
4. Whether defendant received ineffective assistance of counsel based on counsel's failure to object to the summation remark.
5. Whether defendant's sentence should be reduced.

## HOLDINGS

1. The trial court providently exercised its discretion by modifying its Sandoval ruling after defendant's testimony that he was not a troublemaker opened the door to limited inquiry concerning two prior assault convictions.
2. The trial court erroneously instructed the jury that evidence of defendant's two prior convictions could be considered as affirmative evidence of guilt relevant to the charged mental state and the validity of his justification defense.
3. Any error in the trial court's Sandoval or Molineux rulings was harmless and did not require reversal.
4. The court declined to review defendant's challenge to a prosecutorial summation remark in the interest of justice because the claim was not preserved; alternatively, the isolated use of disapproved language was not sufficiently egregious to require reversal and was harmless.
5. Defendant's ineffective-assistance claim was unavailing because he failed to establish that counsel's failure to object was unreasonable or prejudicial.
6. There was no basis to reduce defendant's sentence.

## KEY QUOTATIONS

*“However, the court erroneously determined, and instructed the jury, that evidence of the two prior convictions could be considered as affirmative evidence of guilt, relevant to the charged mental state and the validity of defendant's justification defense”* ([\*1])

*“Nevertheless, any error in either the Sandoval or Molineux aspects of the court's rulings was harmless”* ([\*1])

## FACTUAL BACKGROUND

Defendant was convicted of assaulting an elderly tourist and damaging a bus. During his direct testimony, he stated that he was not a troublemaker, prompting the trial court to permit limited inquiry into two prior assault convictions. The trial court also instructed the jury that the prior convictions could be considered as affirmative evidence of guilt relevant to defendant's mental state and justification defense.

## PROCEDURAL HISTORY

The Supreme Court, New York County, convicted defendant after a jury trial and sentenced him as a second felony offender to an aggregate term of nine to eleven years. The Appellate Division unanimously affirmed the judgment.

## DISPOSITION

affirmed

## CASES CITED

- People v. Feliciano, 133 AD3d 469 (1st Dept 2015), lv denied 27 NY3d 1150 (2016)
- People v. Bradley, 20 NY3d 128, 133-134 (2012)
- People v. Crimmins, 36 NY2d 230 (1975)
- People v. Hall, 18 NY3d 122, 132 (2011)
- People v. Jones, 125 AD3d 403, 406 (1st Dept 2015)
- People v. Benevento, 91 NY2d 708, 713-714 (1998)
- Strickland v. Washington, 466 US 668 (1984)

## OPINION

### PER CURIAM.

People v Pierre (2020 NY Slip Op 03986) People v Pierre 2020 NY Slip Op 03986 Decided on July 16, 2020 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 on July 16, 2020 Gische, J.P., Kapnick, Webber, Kern, González, JJ. 11824 1974/16 [\*1] The People of the State of New York, Respondent, vMatthew Pierre, Defendant-Appellant.

Robert S. Dean, Center for Appellate Litigation, New York (Steven Benathen of counsel), for appellant. Cyrus R. Vance, Jr., District Attorney, New York (Rebecca Hausner of counsel), for respondent. Judgment, Supreme Court, New York County (Robert M. Mandelbaum, J.), rendered July 16, 2018, convicting defendant, after a jury trial, of assault in the second degree, criminal mischief in the third degree and auto stripping in the third degree, and sentencing him, as a second felony offender, to an aggregate term of 9 to 11 years, unanimously affirmed.

The court providently exercised its discretion when it modified its Sandoval ruling after defendant's direct testimony, finding that his testimony that he was "not [] a trouble maker" opened the door to limited inquiry regarding two prior assault convictions (see e.g. *People v Feliciano*, 133 AD3d 469 [1st Dept 2015], lv denied 27 NY3d 1150 [2016]).

However, the court erroneously determined, and instructed the jury, that evidence of the two prior convictions could be considered as affirmative evidence of guilt, relevant to the charged mental state and the validity of defendant's justification defense (see *People v Bradley*, 20 NY3d 128, 133-34 [2012]).

In that context, the evidence at issue cannot be differentiated from propensity evidence. Nevertheless, any error in either the Sandoval or Molineux aspects of the court's rulings was harmless (see *People v Crimmins*, 36 NY2d 230 [1975]). There was overwhelming evidence that defendant brutally attacked an elderly tourist and damaged a bus, and there is no reasonable possibility that the jury would have accepted his incredible testimony (see *People v Hall*, 18 NY3d 122, 132 [2011] [considering defendant's "ridiculous explanation" in harmless error analysis]).

Defendant did not preserve his challenge to a remark by the prosecutor in summation, and we decline to review it in the interest of justice. As an alternative holding, we find that this isolated use of disapproved language (see *People v Jones*, 125 AD3d 403, 406 [1st Dept 2015]) was not so egregious as to require reversal, and that the error was harmless. Defendant's related ineffective assistance of counsel claim is unavailing, because he has not established that his counsel's lack of objection was unreasonable or prejudicial (see *People v Benevento*, 91 NY2d 708, 713-714 [1998]; *Strickland v Washington*, 466 US 668 [1984]).

We perceive no basis for reducing the sentence. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.  
ENTERED: JULY 16, 2020 CLERK