

2005 N.Y. LEXIS 177, *

The People &c., Respondent, v. **Tracey Douglas**, Appellant.

No. 12

COURT OF APPEALS OF NEW YORK

2005 N.Y. LEXIS 177

February 17, 2005, Decided

NOTICE: [*1] THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE NEW YORK REPORTS.

PRIOR HISTORY: People v. Douglas, 309 A.D.2d 597, 765 N.Y.S.2d 349, 2003 N.Y. App. Div. LEXIS 10562 (N.Y. App. Div. 1st Dep't, 2003).

DISPOSITION: Appellate Division order affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: The New York Supreme Court, Appellate Division, affirmed defendant's convictions of first-degree robbery and two counts of second-degree robbery. Defendant appealed.

OVERVIEW: Prior to defendant's trial, one of his co-defendants pled guilty, though she was unavailable to testify against defendant at trial. Subsequently, the People used a redacted version of her plea allocution at defendant's trial. This was error, insofar as it was a testimonial statement and not subject to cross examination. Contrary to the People's argument, defense counsel's timely and specific objection properly preserved this issue. However, while it was error to admit the allocution, there was no reasonable possibility that the error contributed to defendant's conviction, as the victim described in great detail the sequence of events underlying the robbery. Immediately after the attack, the victim identified defendant as the individual who threatened her with a knife. She also provided a detailed description of the weapon used in the attack, which police recovered from his person upon arrest. Further, following identification of the co-defendant as a participant in the crime, the co-defendant led the police to the victim's stolen property. Finally, defendant's remaining contention concerning the trial court's Sandoval ruling lacked merit.

OUTCOME: The order was affirmed.

CORE TERMS: allocution, reasonable possibility, testimonial, redacted, memorandum, recovered, assault, robbery, knife

LexisNexis(R) Headnotes

Constitutional Law > Criminal Process > Right to Confrontation

HN1 The Sixth Amendment of the United States Constitution requires the opportunity for cross-examination of testimonial statements as a precondition to their admissibility.

Constitutional Law > Criminal Process > Right to Confrontation

Criminal Law & Procedure > Appeals > Standards of Review > Harmless & Invited Errors

HN2 Errors resulting in a violation of a criminal defendant's Sixth Amendment right to confrontation are subject to a constitutional harmless error analysis. Such errors are considered harmless when, in light of the totality of the evidence, there is no reasonable possibility that the error affected the jury's verdict.

COUNSEL: Margaret E. Knight, for appellant.

Karen Schlossberg, for respondent.

JUDGES: Chief Judge Kaye and Judges Smith, Ciparick, Rosenblatt, Graffeo, Read and Smith concur.

OPINION:

MEMORANDUM:

The order of the Appellate Division should be affirmed.

Defendant was convicted, following a jury trial, of robbery in the first degree and two counts of robbery in the second degree. On October 15, 2000, four individuals, including a man armed with a knife, assaulted Sala Conyers. They stole her purse, which was later recovered, and other miscellaneous items that she was carrying on her person. Following the assault Conyers telephoned 911. She then canvassed the area with the responding police officers and identified defendant as one of her attackers. Conyers also identified the other three individuals involved in the assault.

Prior to defendant's trial, one of his co-defendants, Tanya Everts, pleaded guilty, though she was unavailable to testify against defendant at trial. Subsequently, the People used a redacted version of her plea allocution at defendant's [*2] trial. The admission of the plea allocution into evidence was error. **HN1** The Sixth Amendment of the United States Constitution requires the opportunity for cross-examination of testimonial statements as a precondition to their admissibility (see *Crawford v Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 [2004]). Insofar as the plea allocution was a testimonial statement, not subject to cross examination, the trial court erred in admitting the allocution (see *People v Hardy*, ___ N.Y.3d ___, 2005 N. Y. LEXIS 179 [2005][decided today]). Contrary to the People's argument, defense counsel's timely and specific objection properly preserved this issue (see generally *People v Gray*, 86 N.Y.2d 10, 652 N.E.2d 919, 629 N.Y.S.2d 173 [1995]).

HN2 Errors resulting in a violation of a criminal defendant's Sixth Amendment right to confrontation are subject to a constitutional harmless error analysis (see *People v Eastman*, 85 N.Y.2d 265, 276, 648 N.E.2d 459, 624 N.Y.S.2d 83 [1995]). Such errors are considered harmless when, in light of the totality of the evidence, there is no reasonable possibility that the error affected the jury's verdict (see *People v Crimmins*, 36 N.Y.2d 230, 240-241, 326 N.E.2d 787, 367 N.Y.S.2d 213 [1975]).

While **[*3]** it was error to admit the allocution here, there was no reasonable possibility that the error contributed to defendant's conviction. The victim's testimony at trial described, in great detail, the sequence of events underlying the robbery. Immediately after the attack Conyers identified defendant as the individual who threatened her with a knife. She also provided a detailed description of the weapon he used in the attack, which police recovered from his person upon arrest, and later identified at trial. Furthermore, following Conyers' identification of Everts as a co-participant in the crime, Everts led the police to Conyers' stolen property. In light of the victim's testimony, and the independent corroboration by other evidence presented at trial, there was no reasonable possibility that the trial court's erroneous admission of the redacted plea allocution influenced the jury's verdict. The error was therefore harmless beyond a reasonable doubt.

Defendant's remaining contention concerning the lower court's Sandoval ruling is without merit.

Order affirmed, in a memorandum. Chief Judge Kaye and Judges Smith, Ciparick, Rosenblatt, Graffeo, Read and Smith concur.

Decided **[*4]** February 17, 2005







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