2019 WL 362065
Supreme Court, Appellate Division,
Second Department, New York.

The PEOPLE, etc., Respondent,
v.
Claude WARD, Appellant.

2015–03826
|
(Ind. No. 8027/13)
|
Argued—September 21, 2018
|
January 30, 2019

Synopsis

Background: After the Supreme Court, Kings County, Alan D. Marrus, J., denied defendant's motion to **suppress** his statements to law enforcement officials, defendant was convicted of murder in the second degree and criminal possession of a weapon in the second degree. Defendant appealed.

Holdings: The Supreme Court, Appellate Division, held that:

[1] defendant waived argument on appeal that police officers violated "knock and announce" rule when they arrested him, and

[2] police officers did not violate "knock and announce" statute when they arrested defendant at his sister's home.

Affirmed.

West Headnotes (2)

[1] Searches and Seizures

Defendant in prosecution for murder in the second degree and criminal possession of a weapon in the second degree waived argument on appeal that police officers violated "knock and announce" rule when they arrested him, where defendant argued at **suppression** hearing that officers made a warrantless entry into apartment without consent. U.S. Const. Amend. 4; N.Y. CPL §§ 120.80(4), (5), 470.05(2).

Cases that cite this headnote

[2] Criminal Law

Police officers did not violate "knock and announce" statute when they arrested defendant at his sister's home for murder and criminal possession of a weapon in the second degree, where officers had an arrest warrant for defendant's sister and provided her with an opportunity to respond to the demand for admittance. U.S. Const. Amend. 4; N.Y. CPL § 120.80(4), (5).

Cases that cite this headnote

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Alan D. Marrus, J.), rendered April 30, 2015, convicting him of murder in the second degree and criminal possession of a weapon in the second degree, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing, of that branch of the defendant's omnibus motion which was to **suppress** his statements to law enforcement officials.

Attorneys and Law Firms

Paul Skip Laisure, New York, N.Y. (Anders Nelson of counsel), for appellant.

Eric Gonzalez, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Thomas M. Ross, and Jordan Cerruti of counsel), for respondent.

WILLIAM F. MASTRO, J.P., JEFFREY A. COHEN, JOSEPH J. MALTESE, LINDA CHRISTOPHER, JJ.

DECISION & ORDER

***1** ORDERED that the judgment is affirmed.

On July 27, 2013, the defendant allegedly shot and killed the victim outside a nightclub following a verbal altercation. The defendant was subsequently arrested while at his sister's apartment. After a jury trial, the defendant was convicted of murder in the second degree and criminal possession of a weapon in the second degree.

[1] **[2]** On appeal, the defendant contends that the Supreme Court should have granted that branch of his omnibus motion which was to **suppress** his statements to law enforcement officials because the arresting officers violated New York's so-called " 'knock and announce' statute" (*People v. Dyla*, 142 A.D.2d 423, 435, 536 N.Y.S.2d 799; *see* CPL 120.80[4], [5]; 140.15[4]; *People v. Riddick*, 45 N.Y.2d 300, 314, 408 N.Y.S.2d 395, 380 N.E.2d 224, revd on other grounds 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639; *People v. Barnhill*, 34 A.D.3d 933, 823 N.Y.S.2d 301; *People v. Clinton*, 67 A.D.2d 626, —— N.Y.S.2d ——; *People v. Reiff*, 64 A.D.2d 719, 407 N.Y.S.2d 534). However, that particular contention is unpreserved for appellate review (*see* CPL 470.05[2]; *People v. De Capua*, 193 A.D.2d 1109, 600 N.Y.S.2d 666; *People v. Jennings*, 94 A.D.2d 802, 463 N.Y.S.2d 53) since, at the **suppression** hearing, the defendant's argument was that the police officers made a warrantless entry into the apartment without consent (*see People v. Payton*, 45 N.Y.2d 300, 308, 408 N.Y.S.2d 395, 380 N.E.2d 224). In any event, the contention is without merit. The officers had an arrest warrant for the defendant's sister and provided her with "an opportunity to respond to the demand for admittance" (*People v. Riddick*, 45 N.Y.2d at 314, 408 N.Y.S.2d 395, 380 N.E.2d 224; *see People v. Barnhill*, 34 A.D.3d at 934, 823 N.Y.S.2d 301; cf. *People v. Frank*, 35 N.Y.2d 874, 363 N.Y.S.2d 953, 323 N.E.2d 191).

The sentence imposed was not excessive (*see People v. Suitte,* 90 A.D.2d 80, 455 N.Y.S.2d 675).

The defendant's remaining contention is unpreserved for appellate review (*see* CPL 470.05[2]) and, in any event, without merit.

MASTRO, J.P., COHEN, MALTESE and CHRISTOPHER, JJ., concur.

All Citations

--- N.Y.S.3d ----, 2019 WL 362065, 2019 N.Y. Slip Op. 00624