

State of New York Court of Appeals

MEMORANDUM

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 89 SSM 28
The People &c.,
Appellant,
v.
Fernando Romualdo,
Respondent.

Submitted by Grazia DiVincenzo, for appellant.
Submitted by Felice B. Milani, for respondent.

MEMORANDUM:

The order of the Appellate Division should be reversed and the case remitted to that Court for further proceedings in accordance with this memorandum.

Defendant was convicted, upon a jury verdict, of second-degree murder (*see* Penal Law § 125.25 [1]). The Appellate Division reversed defendant’s conviction, describing its holding as “on the law and on the facts,” and dismissed the indictment on both legal sufficiency and weight of the evidence grounds (188 AD3d 928, 928-929 [2d Dept 2020]). Both of those determinations were based upon the Appellate Division’s conclusion that “the People presented no evidence placing the defendant at or near the scene of the crime, or linking him in any way to the victim, during the critical time frame in which the murder was believed to have occurred” (*id.* at 929 [emphasis added]). Both holdings were erroneous as a matter of law.

At trial, the People presented proof demonstrating that the victim was sexually assaulted at the time she was killed, including photographic evidence that the victim was found with her pants pulled down and her shirt pulled up, testimonial evidence from the medical examiner that the victim sustained blunt force trauma to the area of her thigh adjacent to her vagina “around the time” of her death, and forensic evidence that the victim was found with semen on her cervix, vulva, and perianal area, and that the semen had not transferred to her clothing. DNA evidence established that the semen found on the victim’s body belonged to defendant. The victim, who was strangled, also suffered various other defensive injuries. Defendant, who lived less than one mile from the crime scene at the time of the murder, gave a false statement to the police, claiming that he did not know the victim and had never had sexual contact with her.

In concluding that there was “no evidence” to support the jury’s verdict, the Appellate Division failed to consider the “reasonable inferences” from this evidence and

view them “in the People’s favor” (*People v Carrel*, 99 NY2d 546, 547 [2002]). Namely, a rational jury could have inferred from the medical evidence presented at trial that the victim was sexually assaulted immediately prior to her death. Inasmuch as defendant’s semen was found on the victim’s genitalia, the semen had not transferred to the victim’s clothing, which was still in a state of disarray when her body was found, defendant lived in close proximity to the crime scene, and defendant falsely denied knowing or having sex with the victim, a rational jury could conclude that defendant was present at the time of the victim’s death and killed the victim during the course of, or immediately after, sexually assaulting her (*see People v Danielson*, 9 NY3d 342, 349 [2007]). Therefore, the evidence was legally sufficient to support defendant’s conviction.

This Court has the authority to review a weight of the evidence determination when “the intermediate appellate court manifestly failed to consider the issue or did so using an incorrect legal principle” (*People v Kancharla*, 23 NY3d 294, 303 [2014]; *see Danielson*, 9 NY3d at 349). Review is proper under those circumstances because the intermediate appellate court’s failure to apply the correct legal standards amounts to an error “as a matter of law,” requiring reversal and remittal “for a proper assessment of the weight of the evidence” (*Kancharla*, 23 NY3d at 303; *see Danielson*, 9 NY3d at 349). That is the case here. The Appellate Division’s statement that it was reversing on weight of the evidence

grounds for the “same reasons” that it was reversing on legal sufficiency grounds constituted an error of law (*see Kancharla*, 23 NY3d at 306; *Danielson*, 9 NY3d at 349).¹

On review of submissions pursuant to section 500.11 of the Rules, order reversed and case remitted to the Appellate Division, Second Department, for further proceedings in accordance with the memorandum herein. Chief Judge DiFiore and Judges Rivera, Fahey, Garcia, Wilson, Singas and Cannataro concur.

Decided November 18, 2021

¹ For this reason, the appeal satisfies the jurisdictional requirements of CPL 450.90 (2) (a) (*see Kancharla*, 23 NY3d at 306 n 5).