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2nd Department Orders New Trial, Rebuking Queens Justice's Behavior

BY DAN M. CLARK

IN A RARE move for an appellate court in New York, a panel of jurists ordered a new trial for a man from Queens this week to be presided over by a different judge, saying that Queens Supreme Court Justice Ronald Hollie inappropriately interfered with proceedings.

The Appellate Division, Second Department said in the decision that Hollie, whose decisions have been reversed by the appellate court on several other occasions, unfairly inserted himself into the trial two years ago.

"There must be a new trial, before a different Justice, because the Supreme Court conducted excessive and prejudicial questioning of trial witnesses," the decision said. "Although defense counsel did not object to the questioning of witnesses by the court, we reach this contention in the exercise of our interest of justice jurisdiction."

Hollie was not immediately avail-

Online

✦ The Second Department decision is posted at nylj.com.

able to comment on the decision Thursday afternoon.

The appeal was brought by Darnell Ramsey, who was convicted on robbery charges by a jury before Hollie in 2017. Ramsey was represented on appeal by attorneys with Robert D. DiDio & Associates in Queens.

"Obviously I'm thrilled with the decision of the Appellate Division," DiDio said. "It was extensive interference by the judge during the trial. Asking questions, ruling on his own objections."

Hollie, according to the decision, decided to take an active role in the trial at several different points. He extensively questioned witnesses beyond the line of inquiry levied by attorneys in the case, interrupted cross-examination by the defense and "generally created the impression that [he] was an advocate on behalf of the People," according to the decision.

DiDio claimed that Hollie asked 226 questions of witnesses in 340 transcript pages from the trial. He was accused of bolstering the credibility of witnesses in favor of the prosecution through that questioning, the decision said.

The panel said the jury may have decided against convicting Ramsey, had Hollie not acted as

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he did during the trial, even though it did not go against the weight of the evidence presented.

"In fulfilling our responsibility to conduct an independent review of the weight of the evidence, we accord great deference to the jury's opportunity to view the witnesses, hear the testimony, and observe demeanor," the decision said. "Upon reviewing the record here, we are satisfied that the verdict of guilt was not against the weight of the evidence."

Hollie was also accused of siding with prosecutors more often when deciding whether to sustain

or overrule objections. According to papers filed by DiDio with the Second Department in the case, Hollie either directly or implicitly sustained objections from prosecutors nearly 70% of the time. But for the defense, Hollie was said to have only sustained objections about 42% of the time.

"It was just extreme," DiDio said. "Obviously the appellate decision agreed."

A request for comment sent to the Queens District Attorney's Office, which prosecuted Ramsey, was not immediately returned.

It's hardly the first time a decision by Hollie has been reversed by the Second Department. As the New York Law Journal reported last year, four of Hollie's decisions have

been reversed by the appellate court for similar behavior in the last two years alone.

In each of those cases, the Second Department highlighted Hollie's practice of interjecting himself into trial proceedings and ordered a new trial with a different judge. That doesn't usually happen when a state appellate court comes to such a conclusion; usually the same judge oversees the new trial.

Associate Justices Leonard Austin, John Leventhal, Sheri Roman and Robert Miller were on the appellate panel that reviewed Hollie's decision.

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Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D60122

G/afa

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Submitted - May 14, 2019

LEONARD B. AUSTIN, J.P.
JOHN M. LEVENTHAL
SHERI S. ROMAN
ROBERT J. MILLER, JJ.

2017-06019

DECISION & ORDER

The People, etc., respondent,
v Darnell Ramsey, appellant.

(Ind. No. 2764/15)

Robert DiDio, Kew Gardens, NY (Bonnie C. Brennan of counsel), for appellant.

John M. Ryan, Acting District Attorney, Kew Gardens, NY (John M. Castellano, Johnnette Traill, and Christopher J. Blira-Koessler of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Ronald Hollie, J.), rendered May 24, 2017, convicting him of robbery in the first degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is reversed, as a matter of discretion in the interest of justice, and the matter is remitted to the Supreme Court, Queens County, for a new trial before a different Justice.

In fulfilling our responsibility to conduct an independent review of the weight of the evidence (*see* CPL 470.15[5]; *People v Danielson*, 9 NY3d 342, 348-349), we accord great deference to the jury's opportunity to view the witnesses, hear the testimony, and observe demeanor (*see People v Mateo*, 2 NY3d 383, 410; *People v Bleakley*, 69 NY2d 490, 495). Upon reviewing the record here, we are satisfied that the verdict of guilt was not against the weight of the evidence (*see* CPL 470.15[5]; *People v Romero*, 7 NY3d 633).

However, there must be a new trial, before a different Justice, because the Supreme Court conducted excessive and prejudicial questioning of trial witnesses. Although defense counsel

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did not object to the questioning of witnesses by the court, we reach this contention in the exercise of our interest of justice jurisdiction (*see* CPL 470.15[6][a]; *People v Sookdeo*, 164 AD3d 1268, 1269-1270; *People v Davis*, 147 AD3d 1077, 1079).

“[W]hile a trial judge may intervene in a trial to clarify confusing testimony and facilitate the orderly and expeditious progress of the trial, the court may not take on ‘the function or appearance of an advocate’” (*People v Zamorano*, 301 AD2d 544, 546, quoting *People v Arnold*, 98 NY2d 63, 67; *see People v Chatman*, 14 AD3d 620, 620). “The principle restraining the court’s discretion is that a trial judge’s ‘function is to protect the record, not to make it’” (*People v Sookdeo*, 164 AD3d at 1269; *see People v Yut Wai Tom*, 53 NY2d 44, 58; *People v Hinds*, 160 AD3d 983, 984). Hence, “when the trial judge interjects often and indulges in an extended questioning of witnesses, even where those questions would be proper if they came from trial counsel, the trial judge’s participation presents significant risks of prejudicial unfairness” (*People v Sookdeo*, 164 AD3d at 1269; *see People v Davis*, 147 AD3d at 1079).

In this case, the Supreme Court engaged in extensive questioning of witnesses, usurped the roles of the attorneys, elicited and assisted in developing facts damaging to the defense on direct examination of the People’s witnesses, bolstered the witnesses’ credibility, interrupted cross-examination, and generally created the impression that it was an advocate on behalf of the People. The court’s improper interference deprived the defendant of a fair trial, and a new trial before a different Justice is warranted (*see People v Sookdeo*, 164 AD3d at 1269-1270; *People v Hinds*, 160 AD3d at 984; *People v Robinson*, 151 AD3d 758, 759; *People v Davis*, 147 AD3d at 1079).

In light of our determination, we need not reach the defendant’s remaining contentions.

AUSTIN, J.P., LEVENTHAL, ROMAN and MILLER, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court