

People v Slater 268 AD2d 260
701 NYS2d 371

PEOPLE v. SLATER

Cite as 701 N.Y.S.2d 371 (A.D. 1 Dept. 2000)

371

Stephen D. Perlmutter, for Plaintiffs-
Respondents.

John S. Park, for Defendants-Appel-
lants.

WILLIAMS, J.P., MAZZARELLI,
WALLACH, ANDRIAS and
FRIEDMAN, JJ.

MEMORANDUM DECISION.

Order, Supreme Court, Bronx County
(Alan Saks, J.), entered on or about May 5,
1998, which, in an action arising out of an
automobile accident in Queens County, de-
nied defendants-appellants' motion to
change venue from Bronx County to
Queens County, unanimously affirmed,
without costs.

The motion court correctly held that the
Queens County police officer who respond-
ed to the accident would not be so inconven-
ienced by having to go to the Bronx as to
warrant a change of venue to that county
(see, *Pittman v. Maher*, 202 A.D.2d 172,
177, 608 N.Y.S.2d 199; compare, *Torres v.*
Larsen, 195 A.D.2d 285, 599 N.Y.S.2d 597).
Nor is such a change warranted by the
Queens County residence of most of the
parties (see, *Dashman v. Really Useful*
Theatre Co., 167 A.D.2d 325, 562 N.Y.S.2d
75). No proper showing of inconvenience
is made with respect to plaintiff's medical
providers.

The Bronx venue was initially proper,
based on the residence of defendant Land-
rum, at which location he was served with
process. Only the alleged convenience of
Queens non-party residents is raised as a
basis for Queens venue.

268 A.D.2d 260

The PEOPLE of the State of
New York, Respondent,

v.

Marvin SLATER, Defendant-Appellant.

Supreme Court, Appellate Division,
First Department.

Jan. 11, 2000.

Defendant was convicted in the Su-
preme Court, New York County, Ronald
Zweibel, J., of two counts of murder in the
second degree (intentional and felony mur-
der), and one count each of robbery in the
first and second degree, and was sen-
tenced to concurrent terms of 25 years to
life on the murder convictions, to run con-
secutively to concurrent terms of eight and
one-third to 25 years and five to 15 years,
respectively, on the robbery convictions.
On review, the Supreme Court, Appellate
Division, held that: (1) detective's testimo-
ny that he believed the victim knew either
one or both of his assailants did not war-
rant mistrial; (2) testimony that case be-
came the subject of television programs as
part of efforts to locate defendant was
admissible; (3) sentence on first-degree
robbery conviction would properly run
concurrently with sentence on intentional
murder conviction; (4) sentences on both
robbery convictions would properly run
concurrently with sentence on felony mur-
der conviction; and (5) consecutive sen-
tences were proper for intentional murder
and second-degree robbery convictions.

Affirmed as modified.

1. Criminal Law §867

Detective's testimony that, based on
the way a robbery victim reacted, the de-
tective believed the victim knew either one
or both of his assailants was not so preju-
dicial as to warrant the drastic remedy of
mistrial, in view of the overwhelming evi-
dence of defendant's guilt and defendant's
failure to seek a curative instruction.



Testimony that case became the subject of television programs as part of the efforts to locate murder defendant, who disappeared after the crime, was probative on the issue of flight, and was admissible as circumstantial evidence of defendant's consciousness of guilt.

Sentence on first-degree robbery conviction would properly run concurrently with sentence on intentional murder conviction, as the robbery count was predicated on the forcible taking of property from the surviving victim as well as serious physical injury to the deceased victim, and the same act that caused the deceased victim's serious physical injury for purposes of the robbery conviction caused his death for purposes of the intentional murder conviction.

Sentences on both of two robbery convictions would properly run concurrently with a sentence on a felony murder conviction, as the robbery was the predicate for the felony murder.

Intentional murder was distinct from second-degree robbery, which did not require injury to the murder victim, and thus, consecutive sentences were appropriate. McKinney's Penal Law § 70.25, subd. 2.

Anita Khashu, for Defendant–Appellant.

NARDELLI, J.P., TOM, LERNER and
SAXE, J.J.

Judgment, Supreme Court, New York County (Ronald Zweibel, J.), rendered July 21, 1997, convicting defendant, after a jury trial, of two counts of murder in the second degree (intentional and felony mur-

The verdict was based on legally sufficient evidence and was not against the weight of the evidence. We see no reason to disturb the jury's determinations concerning credibility.

[1, 2] The court properly exercised its discretion when it denied defendant's request for a mistrial after sustaining his objection to a detective's response that he knew from the way the robbery victim reacted he believed the victim knew either one or both of his assailants. In view of the overwhelming evidence of defendant's guilt, this was not so prejudicial as to warrant such a drastic remedy, particularly in view of defendant's failure to seek a curative instruction. Testimony that this case became the subject of television programs including "America's Most Wanted" as part of the efforts to locate defendant, who disappeared after the crime, was probative on the issue of flight, and was admissible as circumstantial evidence of defendant's consciousness of guilt.

[3-5] Defendant's sentence on the first-degree robbery conviction should run concurrently with his sentence on the intentional murder conviction, because the first-degree robbery count was predicated on the forcible taking of property from the surviving victim as well as serious physical injury to the deceased victim, and because the same act that caused the deceased

victim's serious purposes of the first-degree intentional murder conviction caused his death. *People v. Laureano*, 87 N.Y.2d 150, 664 N.E.2d 100 (1996). Sentences on both robbery run concurrently with felony murder conviction was the predicate (see, *People v. Lee*, 87 N.Y.2d 859, 651 N.Y.S.2d 59, 716 N.E.2d 626 (1996); *People v. Ortiz*, 250 A.D.2d 626 (1998); *People v. Ortiz*, 92 N.Y.2d 858, 700 N.E.2d 448). However, intentional murder was a second-degree robbery, injury to the murder sentences were applied § 70.25(2); *People v.*



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2. Criminal Law ④351(3)

Testimony that case became the subject of television programs as part of the efforts to locate murder defendant, who disappeared after the crime, was probative on the issue of flight, and was admissible as circumstantial evidence of defendant's consciousness of guilt.

3. Sentencing and Punishment 604

Sentence on first-degree robbery conviction would properly run concurrently with sentence on intentional murder conviction, as the robbery count was predicated on the forcible taking of property from the surviving victim as well as serious physical injury to the deceased victim, and the same act that caused the deceased victim's serious physical injury for purposes of the robbery conviction caused his death for purposes of the intentional murder conviction.

4. Sentencing and Punishment — 568

Sentences on both of two robbery convictions would properly run concurrently with a sentence on a felony murder conviction, as the robbery was the predicate for the felony murder.

5. Sentencing and Punishment 591

Intentional murder was distinct from second-degree robbery, which did not require injury to the murder victim, and thus, consecutive sentences were appropriate. McKinney's Penal Law § 70.25, subd. 2.

Susan Gliner, for Respondent.

Anita Khashu, for Defendant-Appellant.

NARDELLI, J.P., TOM, LERNER and
SAXE, J.J.

MEMORANDUM DECISION.

Judgment, Supreme Court, New York County (Ronald Zweibel, J.), rendered July 21, 1997, convicting defendant, after a jury trial, of two counts of murder in the second degree (intentional and felony mur-

der), and one count each of robbery in the first and second degree, and sentencing him to concurrent terms of 25 years to life on the murder convictions, to run consecutively to concurrent terms of 8½ to 25 years and 5 to 15 years respectively on the robbery convictions, unanimously modified, on the law, to provide that the sentence for the first-degree robbery conviction run concurrently with the sentences on the murder convictions and that the sentence for the second-degree robbery conviction run concurrently with the sentence on the felony murder conviction but consecutive to the sentence on the intentional murder conviction, and otherwise affirmed.

The verdict was based on legally sufficient evidence and was not against the weight of the evidence. We see no reason to disturb the jury's determinations concerning credibility.

[1, 2] The court properly exercised its discretion when it denied defendant's request for a mistrial after sustaining his objection to a detective's response that he knew from the way the robbery victim reacted he believed the victim knew either one or both of his assailants. In view of the overwhelming evidence of defendant's guilt, this was not so prejudicial as to warrant such a drastic remedy, particularly in view of defendant's failure to seek a curative instruction. Testimony that this case became the subject of television programs including "America's Most Wanted" as part of the efforts to locate defendant, who disappeared after the crime, was probative on the issue of flight, and was admissible as circumstantial evidence of defendant's consciousness of guilt.

[3-5] Defendant's sentence on the first-degree robbery conviction should run concurrently with his sentence on the intentional murder conviction, because the first-degree robbery count was predicated on the forcible taking of property from the surviving victim as well as serious physical injury to the deceased victim, and because the same act that caused the deceased

victim's serious purposes of the first intentional murder *v. Laureano*, 87 N.Y.S.2d 150, 664 tences on both run concurrently felony murder conspiracy was the preder (*see, People v. N.Y.S.2d 859, 10. N.Y.S.2d 59, 716 Ortiz*, 250 A.D.2d denied 92 N.Y.2d N.E.2d 448). He tional murder wond-degree robbery injury to the m sentences were § 70.25(2); *Peop*

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each of robbery in the degree, and sentencing terms of 25 years to life convictions, to run consecutively, terms of 8½ to 25 years respectively on the counts, unanimously modified, and that the sentence for robbery conviction run concurrently with the sentences on the counts and that the sentence for second-degree robbery conviction run concurrently with the sentence on the counts but consecutive to the intentional murder conviction. Otherwise affirmed.

based on legally sufficient evidence was not against the weight of the evidence. We see no reason why the determinations con-

not properly exercised its discretion in denying defendant's request for a new trial after sustaining his conviction. The victim's response that he did not know the robbery victim until the victim knew either of the assailants. In view of the evidence of defendant's guilt, it is not so prejudicial as to require a new trial. The failure to seek a new trial is not a basis for reversal. Testimony that this was the subject of television programming, "America's Most Wanted," which sought to locate defendant, after the crime, was proof of flight, and was admissible as circumstantial evidence of defendant's guilt. The evidence of defendant's guilt was sufficient.

The sentence on the robbery conviction should run concurrently with his sentence on the intentional murder conviction, because the robbery count was predicated on the taking of property from the victim as well as serious physical injury to the victim, and because the robbery conviction caused the deceased

victim's serious physical injury for purposes of the first-degree robbery conviction caused his death for purposes of the intentional murder conviction (see, *People v. Laureano*, 87 N.Y.2d 640, 643-44, 642 N.Y.S.2d 150, 664 N.E.2d 1212). The sentences on both robbery convictions should run concurrently with the sentence on the felony murder conviction, because the robbery was the predicate for the felony murder (see, *People v. Leo*, 255 A.D.2d 458, 680 N.Y.S.2d 859, *lv. denied* 93 N.Y.2d 973, 695 N.Y.S.2d 59, 716 N.E.2d 1104; *People v. Ortiz*, 250 A.D.2d 626, 673 N.Y.S.2d 150, *lv. denied* 92 N.Y.2d 858, 677 N.Y.S.2d 88, 699 N.E.2d 448). However, because the intentional murder was distinct from the second-degree robbery, which did not require injury to the murder victim, consecutive sentences were appropriate (Penal Law § 70.25(2); *People v. Leo*, *supra*).



268 A.D.2d 262

The PEOPLE of the State of
New York, Respondent,

v.

George BANCHS, Defendant-Appellant.

Supreme Court, Appellate Division,
First Department.

Jan. 11, 2000.

Defendant was convicted in the Supreme Court, New York County, Jerome Hornblass, J., of criminal sale of a controlled substance in the second and third degrees, and was sentenced to concurrent terms of five years to life and three to nine years, respectively. On review, the Supreme Court, Appellate Division, held that: (1) there was sufficient evidence of drug quantity to support conviction for second-degree sale, and (2) defendant was properly

tried in absentia after he absconded during trial.

Affirmed.

1. Drugs and Narcotics § 119.1

There was sufficient evidence of drug quantity to support conviction for criminal sale of a controlled substance in the second degree; weight of cocaine that defendant agreed to sell to the undercover officer was independently shown to be at least one-half ounce, and there was ample evidence warranting a reasonable inference that the combined weight of the recovered and non-recovered drugs far exceeded the statutory threshold.

2. Criminal Law § 636(2)

Defendant was properly tried in absentia after he absconded during trial; trial court made a sufficient inquiry into his whereabouts and appropriate factual findings as to his deliberate absence.

Peter Katz, for Respondent.

Dominic J. Sichenzia, for Defendant-Appellant.

NARDELLI, J.P., TOM, LERNER,
RUBIN and SAXE, JJ.

MEMORANDUM DECISION.

Judgment, Supreme Court, New York County (Jerome Hornblass, J.), rendered June 19, 1989, convicting defendant, after a jury trial, of criminal sale of a controlled substance in the second and third degrees, and sentencing him to concurrent terms of 5 years to life and 3 to 9 years, respectively, unanimously affirmed.

[1] Contrary to defendant's argument, the verdict convicting him of second-degree sale was based on legally sufficient evidence and was not against the weight of the evidence. The weight of the cocaine that defendant agreed to sell to the undercover officer was independently shown to be at least one-half ounce (see, *People v.*

DISPOSITION

TITLE

SOURCE

DISPOSITION

Denied 3/9/2000
(Ciparick, J.)

Denied 3/8/2000
(Wesley, J.)

Denied 3/19/2000
(Rosenblatt, J.)

Denied 3/21/2000
(Levine, J.)

Denied 3/6/2000
(Wesley, J.)

Denied 3/9/2000
(Ciparick, J.)

Denied 3/1/2000
(Kaye, C.J.)

Denied 3/19/2000
(Rosenblatt, J.)

Denied 3/14/2000
(Rosenblatt, J.)

Denied 3/22/2000
(Ciparick, J.)

Denied 3/6/2000
(Smith, J.)

Denied 3/22/2000
(Ciparick, J.)

Denied 3/22/2000
(Ciparick, J.)

Denied 3/13/2000
(Bellacosa, J.)

Denied 3/1/2000
(Kaye, C.J.)

Dismissed
3/22/2000
(Levine, J.)

Denied 3/13/2000
(Bellacosa, J.)

Denied 3/22/2000
(Rosenblatt, J.)

Denied 3/8/2000
(Rosenblatt, J.)

Granted 3/31/2000
(Smith, J.)

Denied 3/8/2000
(Rosenblatt, J.)

Denied 3/8/2000
(Ciparick, J.)

Denied 3/28/2000
(Bellacosa, J.)

Denied 3/8/2000
(Rosenblatt, J.)

Denied 3/7/2000
(Ciparick, J.)

Denied 3/22/2000
(Ciparick, J.)

People v. Saunders (John)

App.Div. 1, Bronx 1/4/2000

Dismissed
3/30/2000
(Kaye, C.J.)

People v. Saunders (John)

App.Div. 1, New York 2/15/2000

Dismissed
3/30/2000
(Kaye, C.J.)

People v. Schery

259 A.D.2d 226, 700 N.Y.S.2d 99
App.Div. 1, New York 11/18/1999

Denied 3/9/2000
(Ciparick, J.)

People v. Schischtoroff

267 A.D.2d 500, 699 N.Y.S.2d 188
App.Div. 3, Ulster 12/2/1999

Denied 3/6/2000
(Wesley, J.)

People v. Schnackenberg

269 A.D.2d 618, 704 N.Y.S.2d 161
App.Div. 3, Hamilton 2/3/2000

Denied 3/28/2000
(Bellacosa, J.)

People v. Schorea

268 A.D.2d 342, 700 N.Y.S.2d 825
App.Div. 1, Bronx 1/20/2000

Denied 3/28/2000
(Bellacosa, J.)

People v. Seabrook

266 A.D.2d 56, 698 N.Y.S.2d 458
App.Div. 1, New York 11/16/1999

Denied 3/22/2000
(Ciparick, J.)

People v. Shany

App.Term 2, 11, Queens 11/5/1999

Denied 3/7/2000
(Ciparick, J.)

People v. Shih Wei Su

267 A.D.2d 260, 699 N.Y.S.2d 291
App.Div. 2, Queens 12/6/1999

Denied 3/13/2000
(Bellacosa, J.)

People v. Slade

269 A.D.2d 886, 705 N.Y.S.2d 481
App.Div. 2, Dutchess 2/7/2000

Denied 3/8/2000
(Smith, J.)

People v. Slater

268 A.D.2d 260, 701 N.Y.S.2d 371
App.Div. 1, New York 1/11/2000

Denied 3/6/2000
(Smith, J.)

People v. Smith

267 A.D.2d 482, 700 N.Y.S.2d 751
App.Div. 2, Kings 12/27/1999

Denied 3/13/2000
(Kaye, C.J.)

People v. Soto (Cesar)

267 A.D.2d 15, 699 N.Y.S.2d 53
App.Div. 1, Bronx 12/2/1999

Denied 3/22/2000
(Ciparick, J.)

People v. Soto (Leo)

266 A.D.2d 74, 698 N.Y.S.2d 629
App.Div. 1, New York 11/16/1999

Denied 3/22/2000
(Ciparick, J.)

People v. Sprague

267 A.D.2d 875, 702 N.Y.S.2d 132
App.Div. 3, Sullivan 12/30/1999

Denied 3/9/2000
(Kaye, C.J.)

People v. Stamps

268 A.D.2d 886, 702 N.Y.S.2d 429
App.Div. 3, Broome 1/27/2000

Denied 3/28/2000
(Bellacosa, J.)

People v. Standley

269 A.D.2d 614, 704 N.Y.S.2d 825
App.Div. 2, Suffolk 2/28/2000

Denied 3/31/2000
(Smith, J.)

People v. Suggs

268 A.D.2d 305, 700 N.Y.S.2d 713
App.Div. 1, New York 1/18/2000

Denied 3/30/2000
(Kaye, C.J.)

People v. Tatroe

266 A.D.2d 830, 698 N.Y.S.2d 187
App.Div. 4, Niagara 11/12/1999

Denied 3/8/2000
(Rosenblatt, J.)

94 N.Y.2d 926

People v. Thompson

266 A.D.2d 875, 698 N.Y.S.2d 188
App.Div. 4, Erie 11/12/1999

Denied 3/8/2000
(Rosenblatt, J.)

People v. Tirado

268 A.D.2d 259, 700 N.Y.S.2d 695
App.Div. 1, New York 1/11/2000

Denied 3/1/2000
(Kaye, C.J.)

People v. Tomlin

265 A.D.2d 353, 696 N.Y.S.2d 471
App.Div. 2, Kings 10/4/1999

Denied 3/8/2000
(Rosenblatt, J.)

People v. Torres

269 A.D.2d 284, 704 N.Y.S.2d 458
App.Div. 1, Bronx 2/22/2000

Denied 3/24/2000
(Smith, J.)

People v. Trivino

266 A.D.2d 323, 699 N.Y.S.2d 60
App.Div. 2, Richmond 11/8/1999

Denied 3/7/2000
(Ciparick, J.)

People v. Turley

267 A.D.2d 600, 699 N.Y.S.2d 774
App.Div. 3, Chemung 12/9/1999

Denied 3/10/2000
(Rosenblatt, J.)

People v. Uciechowski

Sullivan County Court 11/24/1999

Denied 3/28/2000
(Smith, J.)

DISPOSITION	TITLE	SOURCE	DISPOSITION
Dismissed 09/06/2000 (Smith, J.)	People v. Shabazz	Ulster County Court 3/28/2000	Denied 09/21/2000 (Kaye, C.J.)
49 Denied 09/20/2000 (Rosenblatt, J.)	People v. Shannon (Deon)	273 A.D.2d 505, 708 N.Y.S.2d 199 App.Div. 3, Broome 6/8/2000	Denied 09/25/2000 (Wesley, J.)
93 Denied 09/25/2000 (Wesley, J.)	People v. Shannon (Emery)	273 A.D.2d 505, 708 N.Y.S.2d 199 App.Div. 3, Broome 6/8/2000	Denied 09/25/2000 (Wesley, J.)
00 Granted	People v. Sharp	274 A.D.2d 980, 715 N.Y.S.2d 205 App.Div. 4, Erie 7/7/2000	Denied 09/20/2000 (Rosenblatt, J.)
19 09/28/2000 (Wesley, J.)	People v. Sirghi	273 A.D.2d 417, 710 N.Y.S.2d 918 App.Div. 2, Queens 6/19/2000	Denied 09/25/2000 (Wesley, J.)
	People v. Slater	268 A.D.2d 260, 701 N.Y.S.2d 371 App.Div. 1, New York 1/11/2000	Denied 09/06/2000 (Smith, J.) Upon Reconsideration
37 Denied 09/20/2000 (Rosenblatt, J.)		95 N.Y.2d 893	
59 Denied 09/07/2000 (Smith, J.)	People v. Smith	App.Div. 4, Onondaga 8/9/2000	Dismissed 09/20/2000 (Rosenblatt, J.)
37 Denied 09/14/2000 (Smith, J.) Upon Reconsideration	People v. Sorto	App.Div. 2, Nassau 7/17/2000	Denied 09/07/2000 (Smith, J.)
16 Denied Without Prejudice to Re- new 09/12/2000 (Kaye, C.J.)	People v. Stern	270 A.D.2d 118, 704 N.Y.S.2d 569 App.Div. 1, New York 3/16/2000	Denied 09/15/2000 (Smith, J.)
75 Denied 09/22/2000 (Wesley, J.)	People v. Stockdale	270 A.D.2d 294, 704 N.Y.S.2d 840 App.Div. 2, Queens 3/6/2000	Denied 09/14/2000 (Kaye, C.J.)
18 Denied 09/20/2000 (Rosenblatt, J.)	People v. Striplin	273 A.D.2d 120, 711 N.Y.S.2d 716 App.Div. 1, Bronx 6/20/2000	Denied 09/20/2000 (Smith, J.)
00 Denied 09/25/2000 (Wesley, J.)	People v. Stubbs (Lawrence)	App.Div. 2, Orange 8/3/2000	Dismissed 09/07/2000 (Smith, J.)
26 Denied 09/20/2000 (Rosenblatt, J.)	People v. Stubbs (Raymond)	273 A.D.2d 816, 710 N.Y.S.2d 287 App.Div. 4, Monroe 6/16/2000	Denied 09/20/2000 (Rosenblatt, J.)
45 Denied 09/14/2000 (Kaye, C.J.)	People v. Talley	273 A.D.2d 883, 710 N.Y.S.2d 265 App.Div. 4, Monroe 6/16/2000	Denied 09/25/2000 (Wesley, J.)
Denied 09/25/2000 (Wesley, J.)	People v. Taylor	272 A.D.2d 278, 710 N.Y.S.2d 242 App.Div. 1, New York 5/30/2000	Denied 09/20/2000 (Rosenblatt, J.)
05 Denied 09/20/2000 (Rosenblatt, J.)	People v. Thomas (Darrell)	275 A.D.2d 234, 712 N.Y.S.2d 35 App.Div. 1, New York 8/10/2000	Denied 09/19/2000 (Smith, J.)
00 Denied 09/22/2000 (Wesley, J.)	People v. Thomas (Darrell)	273 A.D.2d 953, 710 N.Y.S.2d 240 App.Div. 2, Queens 6/12/2000	Denied 09/25/2000 (Wesley, J.)
33 Denied 09/25/2000 (Wesley, J.)	People v. Thomas (Michael)	App.Div. 2, Kings 7/26/2000	Dismissed 09/29/2000 (Ciparick, J.)
28 Denied 09/25/2000 (Wesley, J.)	People v. Thompson	273 A.D.2d 505, 708 N.Y.S.2d 199 App.Div. 3, Broome 6/8/2000	Denied 09/25/2000 (Wesley, J.)
00 Denied 09/15/2000 (Kaye, C.J.)	People v. Torres	273 A.D.2d 179, 710 N.Y.S.2d 355 App.Div. 1, New York 6/29/2000	Denied 09/25/2000 (Wesley, J.)
72 Denied 09/25/2000 (Wesley, J.)	People v. Trent	273 A.D.2d 50, 709 N.Y.S.2d 538 App.Div. 1, Bronx 6/8/2000	Denied 09/20/2000 (Rosenblatt, J.)
89 Denied 09/25/2000 (Wesley, J.)	People v. Tukes	270 A.D.2d 196, 707 N.Y.S.2d 16 App.Div. 1, New York 3/30/2000	Denied Without Prejudice to Re- new 09/12/2000 (Kaye, C.J.)
28 Denied 09/25/2000 (Wesley, J.)			Dismissed 09/18/2000 (Ciparick, J.)
00 Denied 09/21/2000 (Kaye, C.J.)	People v. Tumminia	App.Div. 3, Broome 7/18/2000	
00 Denied 09/21/2000 (Kaye, C.J.)			