

33 N.Y.3d 945

(The decision of the Court of Appeals of New York is referenced in the New York Supplement and North Eastern Reporter as a decision without published opinion.)

Court of Appeals of New York.

PEOPLE

v.

AYALA-GONZALEZ (Abimael)

3/25/2019

4th Dept: 12/21/2018 (Erie)

**Opinion**

Stein, J.

Applications in Criminal Cases for Leave to Appeal Denied

**All Citations**

33 N.Y.3d 945, 123 N.E.3d 805 (Table), 100 N.Y.S.3d 146

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167 A.D.3d 1536

Supreme Court, Appellate Division,  
Fourth Department, New York.

The PEOPLE of the State  
of New York, Respondent,

v.

Abimael AYALA-GONZALEZ,  
Also Known as Javi, Also  
Known as Rabito, Also Known  
as Mijo, Defendant-Appellant.

1261

KA 16-01597

Entered: December 21, 2018

### Synopsis

**Background:** Defendant was convicted, after a jury trial in the Supreme Court, Erie County, Christopher J. Burns, J., of second-degree murder and second-degree criminal possession of a weapon. He appealed.

**[Holding:]** The Supreme Court, Appellate Division, held that evidence was sufficient to support conviction.

Affirmed.

Trial or Guilt Phase Motion or  
Objection Appellate Review

West Headnotes (2)

### [1] Homicide

↔ Eyewitness identification

### Homicide

↔ Miscellaneous particular  
circumstances

Evidence was sufficient to support conviction for second-degree murder and second-degree criminal possession of a weapon, despite any lack of direct evidence that defendant fired the shot that killed the victim; witnesses testified that defendant was observed arguing with the victim about poor quality drugs earlier on day of the shooting and that, later in the day, gunshots were heard and a man with a blond ponytail, i.e., a distinguishing feature of defendant's appearance, was observed running with a gun in his hands, and other witnesses testified that, around the same time, defendant ran to a yellow pickup truck with a gun in his hand. N.Y. Penal Law §§ 125.25(1), 265.03(3).

Cases that cite this headnote

### [2] Criminal Law

↔ Construction in favor of government, state, or prosecution

### Criminal Law

↔ Inferences or hypotheses from evidence

### Criminal Law

↔ Circumstantial evidence

Even in circumstantial evidence cases, standard for appellate review of legal sufficiency issues is whether any valid line of reasoning and permissible inferences could lead a rational person to the conclusion

reached by the factfinder on basis of the evidence at trial, viewed in the light most favorable to the People.

Cases that cite this headnote

Appeal from a judgment of the Supreme Court, Erie County (Christopher J. Burns, J.), rendered August 17, 2016. The judgment convicted defendant, upon a jury verdict, of murder in the second degree and criminal possession of a weapon in the second degree.

#### Attorneys and Law Firms

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (ERIN A. KULESUS OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (MICHAEL J. HILLERY OF COUNSEL), FOR RESPONDENT.

PRESENT: WHALEN, P.J., PERADOTTO, NEMOYER, CURRAN, AND TROUTMAN, JJ.

#### \*\*779 MEMORANDUM AND ORDER

**\*1536** It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

[1] [2] Memorandum: Defendant appeals from a judgment convicting him, upon a jury verdict, of murder in the second degree (Penal Law § 125.25 [1] ) and criminal

possession of a weapon in the second degree (§ 265.03[3] ), arising from the fatal shooting of the victim outside a residence on Herkimer Street in Buffalo. Defendant contends that the conviction is not supported by legally sufficient evidence primarily because there is no direct evidence that he fired the shot that killed the victim. "It is well settled that, even in circumstantial evidence cases, the standard for appellate review of legal sufficiency issues is whether any valid line of reasoning and permissible inferences could lead a rational person to the conclusion reached by the [factfinder] on the basis of the evidence at trial, viewed in the light most favorable to the People" ( **\*1537** *People v. Pichardo*, 34 A.D.3d 1223, 1224, 825 N.Y.S.2d 603 [4th Dept. 2006], *lv denied* 8 N.Y.3d 926, 834 N.Y.S.2d 516, 866 N.E.2d 462 [2007] [internal quotation marks omitted]; *see generally* *People v. Bleakley*, 69 N.Y.2d 490, 495, 515 N.Y.S.2d 761, 508 N.E.2d 672 [1987] ). Here, prosecution witnesses testified that defendant was observed arguing with the victim about poor quality drugs earlier on the day of the shooting and that, later in the day, gunshots were heard and a man with a blond ponytail, i.e., a distinguishing feature of defendant's appearance, was observed with a gun in his hands running toward West Delavan Avenue, near Herkimer Street. Prosecution witnesses also testified that, around the same time, defendant ran to a yellow pickup truck on West Delavan Avenue with a gun in his hand. We therefore conclude that there is ample evidence in the record from which the jury could have reasonably concluded that defendant possessed a weapon and fired the shot that killed the victim. Additionally, upon viewing the evidence in light of the elements

of the crimes as charged to the jury (*see People v. Danielson*, 9 N.Y.3d 342, 349, 849 N.Y.S.2d 480, 880 N.E.2d 1 [2007] ), we reject defendant's contention that the verdict is against the weight of the evidence (*see generally Bleakley*, 69 N.Y.2d at 495, 515 N.Y.S.2d 761, 508 N.E.2d 672).

Contrary to defendant's further contention, Supreme Court did not err in denying defense counsel's request for a racial identification charge (*cf. People v. Boone*, 30 N.Y.3d 521, 526, 69 N.Y.S.3d 215, 91 N.E.3d 1194 [2017] ). Viewing the evidence, the law and the circumstances of this case in totality and as

of the time of the representation, we conclude that defense counsel provided meaningful representation (*see generally People v. Baldi*, 54 N.Y.2d 137, 147, 444 N.Y.S.2d 893, 429 N.E.2d 400 [1981] ). We further conclude that the sentence is not unduly harsh or severe. Finally, we have reviewed defendant's remaining contention and conclude that it does not warrant modification or reversal of the judgment.

#### All Citations

167 A.D.3d 1536, 90 N.Y.S.3d 778, 2018 N.Y. Slip Op. 08817

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