



60 A.D.2d 852, 400 N.Y.S.2d 583  
(Cite as: 60 A.D.2d 852, 400 N.Y.S.2d 583)

**C**

Supreme Court, Appellate Division, Second Department, New York.  
The PEOPLE etc., Respondent,  
v.  
Wilfredo RIVERA, a/k/a Willie Rivera, Appellant.  
Jan. 3, 1978.

Defendant was convicted in the County Court, Orange County, of murder, and he appealed. The Supreme Court, Appellate Division, held that in view of the length of the trial and the complexity of the evidence, the trial court's failure to explain the relationship of the applicable principles of law to the factual issues required a new trial in the interest of justice.

Reversed.

#### West Headnotes

#### [1] Criminal Law 110 767

110 Criminal Law

110XX Trial

110XX(F) Province of Court and Jury in General

110k754 Instructions Invading Province of Jury

110k767 k. Application of Law to Facts. [Most Cited Cases](#)

While the Criminal Procedure Law has substantially modified the common-law requirement that the court fully marshal the evidence, that requirement has not been entirely eliminated and the trial court must still marshal the evidence to the extent necessary to explain the application of the law to the facts. [CPL 300.10](#), subd. 2.

#### [2] Criminal Law 110 922(2)

110 Criminal Law

110XXI Motions for New Trial

110k922 Instructions and Failure or Refusal

to Instruct

110k922(2) k. Failure to Give Proper Instructions. [Most Cited Cases](#)

Where defendant's trial on murder charge lasted for 11 weeks, during which time many witnesses gave lengthy and often contradictory evidence, and where questions concerning defendant's alleged mental illness and which bullet inflicted the mortal wound were especially complex and involved extensive expert testimony, trial court's failure to explain the relationship of the applicable principles of law to the factual issues required a new trial in the interest of justice. [CPL 300.10](#), subd. 2; [Penal Law § 30.05](#).

\*\*583 Goldberger, Feldman & Breitbart, New York City ( **Joel A. Brenner**, East Northport, of counsel), for appellant.

David S. Ritter, Dist. Atty., Goshen (Denise J. D'Ambrosio, on brief), for respondent.

Before HOPKINS, J. P., and LATHAM, COHALAN and DAMIANI, JJ.

#### MEMORANDUM BY THE COURT.

\*852 Appeal by defendant from a judgment of the County Court, Orange County, rendered October 10, 1975, convicting him of murder, upon a jury verdict, and imposing sentence.

Judgment reversed, as a matter of discretion in the interest of justice, and new trial ordered.

[1] [CPL 300.10](#) (subd. 2) provides, inter alia, that in charging the jury the court must "state the material legal principles applicable to the particular case, and, so far as practicable, explain the application of the law to the facts, but it need not marshal or refer to the evidence to any greater extent than is necessary for such explanation." While this substantially modifies the common-law requirement that the court fully marshal the evidence, the requirement

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has not been entirely eliminated and the “court must still marshal the evidence to the extent necessary to ‘explain the application of the law to the facts’ \*853 (CPL 300.10, subd. 2)” (see [People v. Clayborn](#), 50 A.D.2d 952, 953, 376 N.Y.S.2d 208, 211).

[2] This case involved an 11-week trial in which many witnesses gave lengthy and often times contradictory evidence. The questions concerning defendant's alleged mental illness (see [Penal Law, s 30.05](#)) and which bullet inflicted the mortal wound, were especially complex. Extensive expert testimony was given on these and other issues.

In its charge to the jury, the court did not refer to any of the evidence adduced at the trial. Although defendant raised no objection on this ground, the failure to explain the relationship of the applicable principles of law to the factual issues in this complex case requires a new trial in the interest of justice (see [People v. Mabry](#), 58 A.D.2d 897, 397 N.Y.S.2d 7; [People v. Clayborn](#), 50 A.D.2d 952, 376 N.Y.S.2d 208, *supra* ).

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