

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1139

KA 06-01411

PRESENT: SCUDDER, P.J., SMITH, CARNI, PINE, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ISAAC A. JONES, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (GRAZINA MYERS OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (KELLY CHRISTINE WOLFORD OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Richard A. Keenan, J.), rendered December 21, 2005. The judgment convicted defendant, upon a jury verdict, of manslaughter in the second degree and criminal possession of a weapon in the third degree (two counts).

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

Memorandum: Defendant appeals from a judgment convicting him upon a jury verdict of manslaughter in the second degree (Penal Law § 125.15 [1]) and two counts of criminal possession of a weapon in the third degree (§ 265.02 [1], [former (4)]).

Contrary to defendant's contention, County Court properly admitted the statements of the victim made shortly after the shooting under the excited utterance exception to the hearsay rule inasmuch as the statements were made while she was under the extraordinary stress of her injuries (*see People v Cotto*, 92 NY2d 68, 78-79). Also contrary to defendant's contention, the court properly admitted in evidence the victim's statements made immediately prior to the shooting under the present sense impression exception to the hearsay rule. A witness for the People testified that she heard the victim say to defendant, "Boy, put this thing down. You don't know if it has a safety on it or not." Shortly thereafter, the witness heard a gunshot in the victim's apartment. The statements constitute a present sense impression, because they were made while the declarant was perceiving "the event as it was unfolding" (*People v Vasquez*, 88 NY2d 561, 574), and they were sufficiently corroborated by defendant's statement to the police (*see id.* at 575-576).

Finally, the court did not err in imposing consecutive sentences (*see People v Salcedo*, 92 NY2d 1019, 1021-1022), and the sentence is

not unduly harsh or severe.

Entered: October 2, 2009

Patricia L. Morgan
Clerk of the Court