

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

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_____AD3d_____

Argued - October 19, 2017

L. PRISCILLA HALL, J.P.
JEFFREY A. COHEN
BETSY BARROS
LINDA CHRISTOPHER, JJ.

2015-00057
2015-01919

DECISION & ORDER

The People, etc., respondent,
v Oneil Mairs, appellant.

(Ind. No. 676/11)

Paul Skip Laisure, New York, NY (William Kastin of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, NY (John M. Castellano,
Johnnette Traill, and Danielle S. Fenn of counsel), for respondent.

Appeals by the defendant from (1) a judgment of the Supreme Court, Queens County (Aloise, J.), rendered December 16, 2014, and (2) an amended judgment of the same court rendered January 7, 2015, convicting him of manslaughter in the second degree, criminal possession of a weapon in the second degree, and reckless endangerment in the first degree, upon a jury verdict, and imposing sentence.

ORDERED that the appeal from the judgment is dismissed, as the judgment was superseded by the amended judgment; and it is further,

ORDERED that the amended judgment is affirmed.

The defendant was convicted of manslaughter in the second degree (Penal Law § 125.15[1]), criminal possession of a weapon in the second degree (Penal Law § 265.03[3]), and reckless endangerment in the first degree (Penal Law § 120.25), arising out of the shooting death of a young woman at a house party in Queens.

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“The statutory definition of accessory liability provides that ‘[w]hen one person engages in conduct which constitutes an offense, another person is criminally liable for such conduct when, acting with the mental culpability required for the commission thereof, he solicits, requests, commands, importunes, or intentionally aids such person to engage in such conduct’” (*People v Carpenter*, 138 AD3d 1130, 1131, quoting Penal Law § 20.00; *see People v Scott*, 25 NY3d 1107, 1110). “Inasmuch as the statute requires that the accomplice act with the mental culpability required for the commission of the underlying crime, an accomplice must have a shared intent, or ‘community of purpose’ with the principal” (*People v Carpenter*, 138 AD3d at 1131, quoting *People v Cabey*, 85 NY2d 417, 421; *see People v Scott*, 25 NY3d at 1110).

The defendant’s current challenge to the legal sufficiency of the evidence is unpreserved for appellate review, since he failed to advance his present arguments as a basis for dismissal in the trial court (*see* CPL 470.05[2]; *People v Gray*, 86 NY2d 10; *People v Kearney*, 25 AD3d 622, 623). In any event, viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620), we find that it was legally sufficient to establish beyond a reasonable doubt the defendant’s guilt of manslaughter in the second degree, criminal possession of a weapon in the second degree, and reckless endangerment in the first degree, based on an acting-in-concert theory (*see* Penal Law §§ 20.00; 125.15[1]; 265.03[1][b]; 120.25). Moreover, 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), we nevertheless accord great deference to the factfinder’s opportunity to view the witnesses, hear the testimony, and observe demeanor (*see People v Mateo*, 2 NY3d 383; *People v Bleakley*, 69 NY2d 490). Upon reviewing the record here, we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633; *People v Rizzo*, 142 AD3d 1187).

The defendant’s contention that he was deprived of a fair trial when the Supreme Court admitted into evidence certain allegedly inflammatory photographs is without merit. Photographic evidence “should be excluded only if its sole purpose is to arouse the emotions of the jury and to prejudice the defendant” (*People v Poblner*, 32 NY2d 356, 370; *see People v Stevens*, 76 NY2d 833, 835; *People v Thomas*, 99 AD3d 737, 738). When allegedly inflammatory photographs are relevant to a material issue at trial, the court has broad discretion to determine whether the probative value of the photographs outweighs any prejudice to the defendant (*see People v Stevens*, 76 NY2d at 835; *People v Thomas*, 99 AD3d at 738). Here, the photographs at issue were relevant to material issues in the case, and the court did not improvidently exercise its discretion in admitting them into evidence. Contrary to the defendant’s contentions, the photographs were not so inflammatory as to have deprived him of a fair trial.

The defendant’s contentions regarding alleged prosecutorial misconduct during summation are without merit. The prosecutor’s comments were either fair comment on the evidence and the reasonable inferences to be drawn therefrom or responsive to defense counsel’s summation, or otherwise did not deprive the defendant of a fair trial (*see People v Ashwal*, 39 NY2d 105, 109-110; *People v King*, 144 AD3d 1176, 1176-1177; *People v Nanand*, 137 AD3d 945, 947-948; *People v Willis*, 122 AD3d 950; *People v Hoke*, 111 AD3d 959; *People v McGowan*, 111 AD3d 850).

The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

HALL, J.P., COHEN, BARROS and CHRISTOPHER, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court