

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

857

KA 20-00480

PRESENT: SMITH, J.P., BANNISTER, OGDEN, GREENWOOD, AND DELCONTE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MARIO TURNER, SR., DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (ROBERT L. KEMP OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (JERRY MARTI OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Susan M. Eagan, J.), rendered November 14, 2019. The judgment convicted defendant upon a jury verdict of murder in the second degree.

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 murder in the second degree (Penal Law § 125.25 [1]) arising out of the fatal shooting of defendant's girlfriend.

We reject defendant's contention that County Court erred in denying his challenges for cause with respect to prospective jurors Nos. 7, 13, and 17. "It is well settled that 'a prospective juror whose statements raise a serious doubt regarding the ability to be impartial must be excused unless the [prospective] juror states unequivocally on the record that [the prospective juror] can be fair and impartial' " (*People v Odum*, 67 AD3d 1465, 1465 [4th Dept 2009], *lv denied* 14 NY3d 804 [2010], *reconsideration denied* 15 NY3d 755 [2010], *cert denied* 562 US 931 [2010], quoting *People v Chambers*, 97 NY2d 417, 419 [2002]). Upon our review of the voir dire transcript "in totality and in context" and giving due deference to the determination of the trial court, we conclude that it was not an abuse of discretion for the court to deny defendant's challenges for cause inasmuch as the statements of prospective jurors Nos. 7, 13, and 17 did not cast serious doubt on their ability to render an impartial verdict (*People v Warrington*, 28 NY3d 1116, 1120 [2016]; *see People v Johnson*, 94 NY2d 600, 615-616 [2000]; *People v Garcia*, 148 AD3d 1559, 1559-1560 [4th Dept 2017], *lv denied* 30 NY3d 980 [2017]; *People v Hagenbuch*, 267 AD2d 948, 948-949 [4th Dept 1999], *lv denied* 95 NY2d 797 [2000]).

Defendant's contention that the court erred in admitting *Molineux* evidence of prior bad acts by defendant pertaining to the victim is partially unreserved. To the extent that the contention is preserved, we conclude that the court properly admitted the evidence of prior bad acts inasmuch as that evidence was highly relevant to rebut defendant's accident defense (see *People v Simpson*, 173 AD3d 1617, 1619 [4th Dept 2019], *lv denied* 34 NY3d 954 [2019]), and the probative value of the evidence outweighed the prejudicial effect (see *id.*).

We reject defendant's further contention that the evidence is legally insufficient to support the conviction because the People failed to prove the element of intent. "It is well established that [i]ntent to kill may be inferred from defendant's conduct as well as the circumstances surrounding the crime" (*People v Torres*, 136 AD3d 1329, 1330 [4th Dept 2016], *lv denied* 28 NY3d 937 [2016], *cert denied* 580 US 1068 [2017] [internal quotation marks omitted]; see *People v Lozada*, 164 AD3d 1626, 1627 [4th Dept 2018], *lv denied* 32 NY3d 1174 [2019]). Here, the People presented evidence at trial that defendant shot the victim at close range while the victim was naked and preparing to get into the bathtub and that there were no signs of struggle in the bathroom. Viewing the evidence in the light most favorable to the People (see *People v Contes*, 60 NY2d 620, 621 [1983]), we conclude that it is legally sufficient to establish defendant's intent to kill.

Furthermore, viewing the evidence in light of the elements of the crime as charged to the jury (see *People v Danielson*, 9 NY3d 342, 349 [2007]), we conclude that the verdict is not against the weight of the evidence (see generally *People v Bleakley*, 69 NY2d 490, 495 [1987]).

The sentence is not unduly harsh or severe. Finally, we have reviewed defendant's remaining contention and conclude that it is without merit.