

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

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KA 19-01645

PRESENT: LINDLEY, J.P., MONTOUR, OGDEN, GREENWOOD, AND HANNAH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TASHEONIA M. HILLS, DEFENDANT-APPELLANT.

KATHRYN M. FESTINE, UTICA, FOR DEFENDANT-APPELLANT.

TODD C. CARVILLE, DISTRICT ATTORNEY, UTICA (MICHAEL A. LABELLA OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Oneida County Court (Robert Bauer, J.), rendered February 11, 2019. The judgment convicted defendant upon a jury verdict of murder in the second degree and criminal possession of a weapon in the fourth degree.

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

Memorandum: Defendant appeals from a judgment convicting her upon a jury verdict of murder in the second degree (Penal Law § 125.25 [1]) and criminal possession of a weapon in the fourth degree (§ 265.01 [2]) arising from her conduct in repeatedly stabbing her mother and thereby causing her death. We affirm.

Defendant contends that the verdict is against the weight of the evidence because the jury erred in rejecting the affirmative defense of lack of criminal responsibility by reason of mental disease or defect (Penal Law § 40.15). "A defendant will be absolved of criminal liability under [section] 40.15 if, 'at the time of [the criminal] conduct, as a result of mental disease or defect, [she] lacked substantial capacity to know or appreciate either . . . [t]he nature and consequences of such conduct [or] [t]hat such conduct was wrong' " (*People v Gilbert*, 199 AD3d 1048, 1048-1049 [3d Dept 2021]). While the People are required to prove the elements of the charged crimes beyond a reasonable doubt, the defendant has the burden of proving the elements of the affirmative defense by a preponderance of the evidence (*see People v Kohl*, 72 NY2d 191, 193-194 [1988]). "When there is conflicting expert evidence on the issue of criminal responsibility, the jury is generally free to accept or reject, in whole or in part, the opinion of any expert, at least in the absence of a serious flaw in the expert's testimony" (*People v Gillie*, 185 AD3d 1539, 1540 [4th Dept 2020], *lv denied* 35 NY3d 1094 [2020] [internal quotation marks omitted]; *see Gilbert*, 199 AD3d at 1049).

Initially, we agree with defendant that a different verdict would not have been unreasonable based on the testimony of two defense expert witnesses that defendant lacked substantial capacity to know and appreciate the nature and consequences of her actions (see *People v Leppanen*, 218 AD3d 995, 1000-1001 [3d Dept 2023], *lv denied* 40 NY3d 1081 [2023]; *Gillie*, 185 AD3d at 1539-1540; see generally *People v Danielson*, 9 NY3d 342, 348 [2007]). Nevertheless, viewing the evidence in light of the elements of the crimes as charged to the jury (see *Danielson*, 9 NY3d at 349), including the charge on the defense of lack of criminal responsibility by reason of mental disease or defect, we conclude that the verdict is not against the weight of the evidence (see generally *People v Bleakley*, 69 NY2d 490, 495 [1987]).

Defendant and her mother had a history of disputes, and defendant also had a history of manipulation and poor anger management. Although defendant's experts opined that defendant's odd behavior in the weeks immediately preceding the murder reflected psychotic symptoms, the People's expert opined that defendant never exhibited any psychotic symptoms. The People's expert further opined that defendant's borderline personality disorder and her anger toward her mother explained the crime. In support of his opinion, the People's expert relied upon, *inter alia*, defendant's behavior shortly after the murder, including her interview with the police; her statements in that interview; and her apology to a relative when defendant returned to the scene of the crime, which evidenced that she knew that her conduct was wrong. Contrary to defendant's contention, the testimony of the People's expert was not infected by a serious flaw (see *Gillie*, 185 AD3d at 1540; *People v Fitzrandolph*, 162 AD3d 1537, 1538 [4th Dept 2018], *lv denied* 32 NY3d 937 [2018], *reconsideration denied* 32 NY3d 1111 [2018]). It was for the jury to resolve the conflict in the expert testimony with respect to whether defendant had the substantial capacity to know and appreciate the nature and consequences of her actions, and we perceive no basis to disturb the jury's rejection of defendant's affirmative defense (see *Leppanen*, 218 AD3d at 1001; *Gilbert*, 199 AD3d at 1056-1057).

Finally, the sentence is not unduly harsh or severe.

All concur except OGDEN, J., who dissents and votes to modify in accordance with the following memorandum: I respectfully dissent because I conclude that the sentence imposed for the conviction of murder in the second degree (Penal Law § 125.25 [1]) is unduly harsh and severe under the circumstances of this case. "[S]ociety derives no legitimate benefit from imprisoning a person for longer than is warranted" (*People v Brisman*, 43 NY3d 322, 331 [2025]). A sentence must account for the nature of the crime and the circumstances of defendant while also providing an incentive and opportunity for defendant to achieve and demonstrate rehabilitation in the future (see *People v Franklin*, 206 AD3d 1610, 1613 [4th Dept 2022], *lv denied* 38 NY3d 1150 [2022]). Here, the record is replete with evidence that defendant was struggling with mental health issues at the time of the crime. Although the jury rejected the affirmative defense of lack of criminal responsibility by reason of mental disease or defect (see

Penal Law § 40.15), the record makes clear that defendant's mental health impacted her ability to fully understand her actions. In my view, defendant's recent mental health history indicates that a lengthy prison sentence would be unduly harsh (see *People v Demilio*, 227 AD3d 1098, 1101 [2d Dept 2024], *lv denied* 42 NY3d 1035 [2024]), and I believe that her actions before that time demonstrate that she is capable of rehabilitation in the future. I would therefore modify the judgment as a matter of discretion in the interest of justice by reducing the sentence of imprisonment imposed for murder in the second degree to an indeterminate term of imprisonment of 15 years to life (see Penal Law §§ 70.00 [2] [a]; [3] [a] [i]; 125.25 [1]).