

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

880

KA 19-02184

PRESENT: WHALEN, P.J., SMITH, GREENWOOD, DELCONTE, AND HANNAH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JOE WASHINGTON, DEFENDANT-APPELLANT.

ROSENBERG LAW FIRM, BROOKLYN (MORGAN NAMIAN OF COUNSEL), FOR
DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (DAVID D. BASSETT
OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Onondaga County Court (John H. Crandall, A.J.), rendered September 30, 2019. The judgment convicted defendant, upon a jury verdict, of manslaughter in the first 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 manslaughter in the first degree (Penal Law § 125.20 [1]). Defendant's conviction stems from an argument between defendant and the victim, which led to defendant fatally stabbing the victim. Defendant admitted that he stabbed the victim but argued during trial that he acted in self-defense.

Viewing the evidence in light of the elements of that crime as charged to the jury (*see People v Danielson*, 9 NY3d 342, 349 [2007]), including the charge on the defense of justification, we reject defendant's contention that the verdict is against the weight of the evidence with respect to the justification defense (*see generally People v Bleakley*, 69 NY2d 490, 495 [1987]). Here, the jury could reasonably have found based on the testimony of the People's witnesses that the victim was not using or attempting to use deadly physical force when defendant stabbed him (*see People v Schrader*, 232 AD3d 1293, 1295 [4th Dept 2024], *lv denied* 43 NY3d 946 [2025]; *People v Cruz*, 175 AD3d 1060, 1060 [4th Dept 2019], *lv denied* 34 NY3d 1016 [2019]; *see generally People v Haynes*, 133 AD3d 1238, 1239 [4th Dept 2015], *lv denied* 27 NY3d 998 [2016]).

We reject defendant's contention that County Court erred in denying his pretrial request for a copy of the victim's entire criminal record to use in support of a justification defense (*see generally People v Wilson*, 71 AD3d 799, 800 [2d Dept 2010], *lv denied*

15 NY3d 779 [2010]). It is well settled that a court may permit a defendant who asserts a justification defense in a homicide trial to introduce evidence of specific acts of violence committed by the victim, provided that the defendant establishes that they had knowledge of the acts at the time of the homicide and that the acts are reasonably related to the crime of which the defendant stands charged (see *id.*; see generally *People v Miller*, 39 NY2d 543, 548-553 [1976]; *People v Santiago*, 211 AD2d 734, 734 [2d Dept 1995], *lv denied* 85 NY2d 942 [1995]). Here, we conclude that, with respect to the prior violent acts identified in defendant's request, he did not establish that the acts were "reasonably related, in time and quality," to the homicide charge and thus failed to show their relevancy to his justification defense (*Santiago*, 211 AD2d at 734; see *People v Every*, 146 AD3d 1157, 1163 [3d Dept 2017], *affd* 29 NY3d 1103 [2017]; *People v Rivera*, 206 AD3d 498, 499 [1st Dept 2022], *lv denied* 38 NY3d 1190 [2022]). Additionally, defendant did not establish that he was aware at the time of the homicide of any other prior violent acts reasonably related to that crime that made up the remainder of the victim's criminal record and thus did not establish a nexus between any of those acts and his justification defense (see *People v Reynoso*, 73 NY2d 816, 818 [1988]; *Wilson*, 71 AD3d at 800; *People v Grant*, 221 AD2d 901, 901 [4th Dept 1995], *lv denied* 88 NY2d 879 [1996]).

To the extent that defendant contends that he was deprived of the right to present a complete justification defense because the court denied his record request, we conclude that defendant failed to preserve that contention for our review (see generally *People v Ramsey*, 59 AD3d 1046, 1048 [4th Dept 2009], *lv denied* 12 NY3d 858 [2009]). In any event, defendant was permitted to testify at trial about the victim's short temper, about the victim showing defendant various weapons, including knives, in his possession years prior to the stabbing, and about defendant's awareness on the date of the incident that the victim had committed prior violent acts against others. Thus, evidence of the violent behavior of the victim and its effect on defendant's mental state was sufficiently before the jury to enable it to adequately consider the issue of justification (see generally *id.*; *People v Adams*, 272 AD2d 953, 953 [4th Dept 2000], *lv denied* 95 NY2d 831 [2000]).

We also reject defendant's alternative contention that he was denied effective assistance of counsel based on defense counsel's failure to obtain the victim's criminal record and related police reports. Defendant has "failed to demonstrate the absence of strategic or other legitimate explanations for defense counsel's alleged shortcoming[]" (*People v Rojas-Aponte*, 224 AD3d 1264, 1265 [4th Dept 2024] [internal quotation marks omitted]). Viewing the evidence, the law, and the circumstances of this case in totality and as of the time of the representation, we conclude on the record before us that defendant received meaningful representation (see generally *People v Baldi*, 54 NY2d 137, 147 [1981]).

Defendant further contends that he was deprived of a fair trial by several instances of prosecutorial misconduct that occurred during the opening statement and summation, including allegations that the prosecutor vouched for the credibility of the witnesses, denigrated the defense, and misrepresented the trial evidence to mislead the jury about the facts and to garner sympathy for the victim. Defendant failed to preserve those contentions for our review because he failed to object to most of the alleged improprieties at trial (see CPL 470.05 [2]; *People v Moorhead*, 224 AD3d 1225, 1227 [4th Dept 2024], *lv denied* 41 NY3d 1003 [2024]; *People v Tucker*, 195 AD3d 1547, 1548 [4th Dept 2021], *lv denied* 37 NY3d 1030 [2021]; *People v Atkinson*, 185 AD3d 1447, 1448 [4th Dept 2020], *lv denied* 35 NY3d 1111 [2020]), and the objections that he interposed were "on different grounds from those raised on appeal" (*Tucker*, 195 AD3d at 1548 [internal quotation marks omitted]). We decline to exercise our power to review defendant's contentions as a matter of discretion in the interest of justice (see CPL 470.15 [6] [a]; *People v Gaiter*, 224 AD3d 1384, 1385 [4th Dept 2024], *lv denied* 41 NY3d 1018 [2024], *reconsideration denied* 42 NY3d 970 [2024]).

Defendant's contention that the reasons that the prosecutor gave for striking a prospective juror in response to his *Batson* challenge were pretextual is also unpreserved inasmuch as defendant "failed to articulate . . . any reason why he believed that the prosecutor's explanations were pretextual" (*People v Massey*, 173 AD3d 1801, 1802 [4th Dept 2019] [internal quotation marks omitted]; see *People v Jackson*, 185 AD3d 1454, 1455 [4th Dept 2020], *lv denied* 35 NY3d 1113 [2020]). We decline to exercise our power to review defendant's contention as a matter of discretion in the interest of justice (see CPL 470.15 [6] [a]).

We reject defendant's contention that the sentence is unduly harsh and severe.

Finally, we have reviewed defendant's remaining contention and conclude that it does not warrant reversal or modification of the judgment.