

People v Quiles

2007 NY Slip Op 34585(U)

August 28, 2007

Supreme Court, Westchester County

Docket Number: 1584-06

Judge: Robert M. DiBella

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED
AND
ENTERED
ON 8/29 2007
WESTCHESTER
COUNTY CLERK

-----X
THE PEOPLE OF THE STATE OF NEW YORK

- against -

FILED
AUG 29 2007
TIMOTHY G. BOG
COUNTY CLERK
COUNTY OF WESTCHESTER

VICTOR QUILES,

DECISION AND ORDER

Ind. No. 1584-06

Defendant

-----X
DIBELLA, J.

The defendant moves pursuant to Criminal Procedure Law § 330.30(1) for an Order setting aside a jury verdict finding him guilty of Burglary in the Second Degree, Petit Larceny, and Criminal Possession of Stolen Property in the Fifth Degree. The People oppose the motion. The motion is denied.

The defendant makes the following claims: (1) the People excluded potential jurors on the basis of race in violation of State and Federal Law; (2) the court erred in not striking the testimony of Oscar Banegas based on the People's failure to disclose his prior conviction for Driving While Intoxicated; and (3) the court improperly charged the jury on the elements of Burglary in the Second Degree.

CPL 330.30 (1) authorizes a trial court to set aside or modify a verdict only in the case of error, which, "if raised upon an appeal from a prospective judgment of conviction, would require a reversal or modification of the judgment as a matter of law by an appellate court." See Id. Reversal of a judgment of conviction is not mandated on appeal as a matter of law unless the issue has been preserved for appellate review by a timely

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objection directed at the specific deficiency in the proof. See People v. Everson, 100 N.Y.2d 609 (2003); People v. Gray, 86 N.Y.2d 10, 19 (1995).

The defendant first claims that the People engaged in purposeful discrimination against prospective jurors based upon race in violation of the Equal Protection clause of the 14th Amendment to the Federal Constitution as well as the New York State Constitution. See Batson v. Kentucky, 476 U.S. 79 (1986); People v. Kern, 75 N.Y.2d 638, *cert. denied*, 498 U.S. 824 (1990). He claims that the prosecutor improperly exercised peremptory challenges to secure the removal of four African-American jurors on the jury panel, thereby creating a Batson issue. See Batson v. Kentucky, *supra*. However the defendant failed to make a prima facie showing of discrimination in the People's exercise of their peremptory challenges. His mere assertion that the People were intentionally striking jurors on the basis of race was insufficient to raise an inference of discrimination. See People v. Jenkins, 84 N.Y.2d 1001 (1994)(reliance only on number of African-American jurors struck insufficient to raise an inference establishing a prima facie case). Assuming, *arguendo*, that the defendant made a prima facie showing that the prosecutor's challenges were used for discriminatory purposes, see People v. Scott, 70 N.Y.2d 420, 423, 425-426, the court finds that the defendant's showing was sufficiently rebutted by the prosecutor's articulation of race-neutral explanations for the exercise of the peremptory challenges in question. See People v. Baysden, 128 A.D.2d 795; People v. Cartagena, 128 A.D.2d 797.

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The defendant next claims that the court should have stricken the testimony of Oscar Banegas because the People failed to disclose his prior misdemeanor conviction for Driving While Intoxicated. This claim has no merit. As there was no showing of bad faith by the People,¹ the court properly exercised its discretion in not striking his testimony. Moreover, the defendant knew of the conviction and questioned Mr. Banegas about it on cross-examination. Accordingly, the defendant fails to show that he suffered any prejudice from the People's failure to disclose the prior conviction, see People v. Wood, 40 A.D.3d 663 (2nd Dept. 1007), and reversal would not be warranted under these circumstances. See People v. Colavito, 87 N.Y.2d 423 (1996); People v. Arac, 297 A.D.2d 560 (1st Dept. 2002).

The defendant's final claim is that the court failed to instruct the jury that to convict the defendant of Burglary in the Second Degree the People were required to prove beyond a reasonable doubt that the defendant had the intent to commit a crime at the time of his unlawful entry. Contrary to the defendant's assertion, the court instructed the jury that "a person has the intent to commit a crime in a building when that person's conscious objective or purpose is *at the time of the unlawful entry* to commit a crime in the building." Hence, the charge delivered to the jury adequately conveyed the elements of Burglary in the Second Degree and provides no basis to set aside the defendant's conviction.

¹The People credibly claimed that they were unaware of the conviction.

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Defendant's Pro Se Motion

The defendant's pro se motion pursuant to Criminal Procedure Law § 330.30(1) is also denied. A criminal defendant has no Federal or State constitutional right to hybrid representation. See People v. Rodriguez, 95 N.Y.2d 497 (2000). As the defendant is represented by counsel, his motion is denied on this basis. See id. Moreover, the court has reviewed the defendant's pro se motion and finds that none of the claims therein would require an appellate court to reverse his conviction.

The defendant's ineffective assistance of counsel claims are procedurally barred and substantively without merit. His claims surrounding counsel's performance on matters appearing outside the record are not cognizable in a CPL § 330 motion. See People v. Wolf, 98 N.Y.2d 105, 119 (2002).

To substantiate his claim that counsel failed to present an adequate defense at trial the defendant must demonstrate that he was deprived of meaningful representation and that he suffered actual prejudice as a result of counsel's deficient representation. See Matter of Leo UU, 288 A.D.2d 711, 713 (3rd Dept. 2001). He must also "demonstrate the absence of strategic or other legitimate expectations for counsel's alleged shortcomings." People v. Benevento 91 NY2d 708, 712 (1998). The conclusory allegations set forth in defendant's motion fail to make that showing. Hence, he has not demonstrated that counsel's conduct was deficient or that he suffered any prejudice from the alleged deficient representation. See eg. Matter of Thompson v. Gibeault, 305 A.D.2d 873, 875 (3rd Dept. 2003).

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Based upon the foregoing, the defendant's motion is denied.

In reaching this decision the court considered the following papers:

- (1) Defendant's Notice of Motion and Affirmation and Brief in Support dated August 21, 2007;
- (2) Defendant's pro se Notice of Motion and Affidavit in Support dated July 24, 2007; and
- (3) The People's Affirmation in Opposition dated August 27, 2007.

Dated: White Plains, New York
August 28, 2007



HON. ROBERT DIBELLA, A.J.S.C.

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