

People v Ahmed

2009 NY Slip Op 31515(U)

July 9, 2009

Supreme Court, Kings County

Docket Number: 3772/2008

Judge: John G. Ingram

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM, PART 21

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THE PEOPLE OF THE STATE OF NEW YORK, DECISION AND ORDER

-against-

Indictment No. 3772/2008

SALAH AHMED,

Defendant,

-----X

INGRAM, J.

Defendant stands convicted on April 28, 2009, after jury trial in Supreme Court, Kings County, of Assault in the First Degree and Criminal Possession of a Weapon in the Fourth Degree. (J. Ingram). Defendant has filed a motion with this Court pursuant to C.P.L. § 330.30 seeking an order of this Court setting aside his conviction on the grounds that (1) as a matter of law Defendant's use of force was justified in defense of premises and in defense of a person in the course of a burglary; (2) the evidence at trial was insufficient as a matter of law to prove that the complainant suffered serious physical injury, and (3) the evidence adduced at trial was legally insufficient to support the jury's determination that Defendant's conduct was the direct cause of the complainant's injury. The People oppose his application in its entirety.

TRIAL TESTIMONY

On April 13, 2008, at approximately 7:30 p.m., Bunkless Bovian and two of his friends, Joshua Bloomfield and Finesse Young, entered a bodega at 1569 East New York Avenue, Brooklyn. Two clerks were working behind the counter . Hazem Kassim was working at the deli and Abubaker Khalid was at the register. Bunkless and his two friends were standing in front of the counter waiting to order food. At one point, Joshua Bloomfield and Hazem Kassim became embroiled in

a verbal argument. Joshua invited Mr. Kassim to come outside to fight him. Instead, Joshua and Mr. Kassim met at the side of the counter. Joshua testified that Mr. Kassim grabbed his shirt and pulled his hair. Finesse tried to grab Mr. Kassim's arm and Bunkless joined in the physical altercation. While the People's witnesses, including Finesse, stated that Finesse did not possess any weapons, Mr. Kassim testified that Finesse possessed a razor blade and slashed him across the forearm and wrist. Mr. Kassim testified that Bunkless knocked him to the floor and proceeded to kick and stomp him. Mr. Kassim grabbed a large butcher knife and pointed it in the direction of Bunkless. According to the People's witnesses, Bunkless backed away from Mr. Kassim. At this point, Defendant emerged from a back room and grabbed Bunkless from behind and struck him in the head with a hammer as Bunkless tried to exit the store. Bunkless exited the store and collapsed across the street. He was taken to Brookdale University Hospital Medical Center ("Brookdale"), suffering injuries to his head, including a fractured skull. He remained in the pediatric intensive care unit on life support for four days. Bunkless received nine staples to close the wound to his head. He testified that he continues to suffer from slightly slurred speech, headaches, short and long term memory loss and learning disabilities.

CONCLUSIONS OF LAW

Pursuant to C.P.L. § 330.30(1), a verdict may be set aside on "any ground appearing in the record which, if raised upon an appeal from a perspective judgment of conviction, would require a reversal or modification of the judgment as a matter of law by an appellate court." While C.P.L. §330.30 transforms a trial court into a "quasi" intermediate appellate court, unlike an intermediate appellate court, a trial court determining a C.P.L. § 330.30 motion is not vested with discretionary "interest of justice" jurisdiction. CPL 470.15(3)(c); People v. McClain, 12 Misc.3d 1185(A)(Kings

County 2006) . According to C.P.L. § 330.30(1), the Court can disturb the verdict prior to sentence only if the grounds for the motion would require an appellate court to reverse the conviction as a matter of law. People v. Hines, 97 N.Y.2d 56, 61 (2001). This Court cannot set aside the verdict as against the weight of the evidence, rather, it must determine only “whether there is any valid line of reasoning and permissible inferences which could lead a rational person to the conclusion reached by the jury on the basis of the evidence at trial in order to uphold the verdict.” People v. Bleakley, 69 N.Y.2d 490 (1987). A “reviewing court must be careful not to substitute itself for the jury. Great deference must be accorded to the fact-finder’s opportunity to view the witnesses, hear the testimony and observe demeanor.” Bleakley, 69 N.Y.2d at 495.

Furthermore, in order for this Court to consider issues of law in a C.P.L. § 330.30 motion, those issues must have been properly preserved before this Court by a sufficiently specific objection or other application for relief. Hines, 97 N.Y.2d at 61; People v. Medina, 523 N.Y.2d 951, 953 (1981)(holding that defendant must request curative instruction or move for mistrial in order in order to preserve issue). This Court cannot grant Defendant’s C.P.L. § 330.30 motion when he has unpreserved claims. People v. Everson, 100 N.Y.2d 609 (2003).

Defendant moves this Court to set aside the verdict on the basis that his defense of justification would require a reversal of the judgment as a matter of law. However, since Defendant did not properly preserve this argument before this Court by a specific objection or other application for relief, this Court cannot consider it. At the end of the People’s case, Defendant moved for a trial order of dismissal based on the argument that the People failed to prove serious physical injury; that the People failed to prove the Defendant intended to cause serious physical injury; and that the People failed to prove the Defendant was the direct cause of Bunkless’ injury. Defendant never

alerted this Court to the specific claim that Defendant was justified as a matter of law. Therefore, Defendant's complaint about the People's failure to disprove justification as a matter of law has not been properly preserved before this Court by a sufficiently specific objection or other application for relief and this claim cannot be made for the first time in a C.P.L. § 330.30 motion. Hines, 97 N.Y.2d at 61; Medina, 523 N.Y.2d at 953.

Even if this Court were to consider this argument on the merits, it would still deny this branch of Defendant's motion. When a defendant raises the defense of justification at trial, the "People must prove beyond a reasonable doubt that the defendant's conduct wasn't justified." People v. Craig, 78 N.Y.2d 616, 619 (1991). Justification consists of both subjective and objective elements. The subjective element relates to whether the defendant believed that the use of deadly force was necessary. Under the objective prong, the jury considers whether a reasonable person in defendant's circumstances would have believed that deadly the force was required. People v. Umali, 10 N.Y.3d 417 (2008). The People must prove beyond a reasonable doubt that the defendant did not believe deadly physical force was necessary or that a reasonable person in the same situation would not have perceived that deadly force was necessary. People v. Goetze, 68 N.Y.2d 96, 115 (1986).

Defendant claims that there was overwhelming evidence to suggest that a burglary was in progress, that Defendant reasonably believed that a burglary was in progress and that Defendant reasonably believed that deadly physical force was necessary to terminate the burglary. During the trial, the People presented evidence through numerous eyewitnesses that, rather than a burglary, there was a mutual fight between Joshua Bloomfield and Hazem Kassim. While Mr. Kassim testified that Finesse Young struck him with a razor, the testimony of the People's witnesses contradicted his claim. At some point, Defendant became involved, striking Bunkless Bovian in the head with a

hammer. Viewing the evidence in the light most favorable to the People, the jury could conclude that Defendant did not reasonably believe that a burglary was in progress at the time he struck Bunkless in the head with the hammer based on the People's witnesses and a DVD depicting the incident. While the statements of the People's witnesses were challenged during cross examination, they were never contradicted by material discrepancies, or impeached by credible, contrary evidence to deem them unworthy of belief as a matter of law. People v. Gruttola, 43 N.Y2d 116, 122 (1977). "Minor discrepancies between the testimony of witnesses is not sufficient to show that a witness's testimony was incredible as a matter of law. Credibility is a matter reserved exclusively for the jury and we are traditionally resistant to second-guessing its determination on this issue." People v. DiGirolamo, 108 A.D.2d 755 (2d Dept. 1985). The conflicting testimony of the People's witnesses and defense witness presented a credibility issue and based on the verdict, the jury credited the People's witnesses' account, which was not "so unworthy of belief as to be incredible as a matter of law." People v. Wright, 214 A.D.2d 759, 762 (1995). Obviously, the jury concluded, based on all of the evidence, that Defendant had assaulted Bunkless Bovian and did so without justification as that term is defined by Article 35 of the Penal Law. This Court finds no valid reason to disturb the jury's verdict.

Defendant also claims that the evidence at trial was insufficient as a matter of law to prove that Bunkless Bovian suffered serious physical injury. C.P.L. § 10.00(10) defines serious physical injury "as physical injury which creates a substantial risk of death, or which causes death or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ." Dr. Mary Baldauf, a pediatric critical care specialist employed at Brookdale, testified about Bunkless' severe and

major traumatic brain injury. She testified that he suffered a fractured skull, he was placed in a medically induced coma to prevent his brain swelling and that without medical intervention, he would have died. The medical records from Brookdale were admitted into evidence and the records were consistent with Dr. Baldauf's testimony concerning the seriousness of his injury. Defense counsel cites People v. Parrotte to support his claim that the evidence at trial was insufficient as a matter of law to prove serious physical injury. People v. Parrotte, 267 A.D.2d 884 (3d Dept. 1999). However, the physician's testimony in Parrotte was that the victim's injuries were not life threatening and already healing and no medical treatment was required, besides Tylenol and hospital observation. Parrotte, 267 A.D.2d at 887. Those facts are completely distinguishable from the facts in the case at hand. Dr. Baldauf testified that without medical intervention, Bunkless would have died. Extensive medical treatment was administered to Bunkless in order to keep him alive and he was placed on life support for three days. Considering the evidence in the instant case in the light most favorable to the People, the jury could have found that Bunkless Bovian's injury was consistent with the definition of serious physical injury under C.P.L. § 10.00(10).

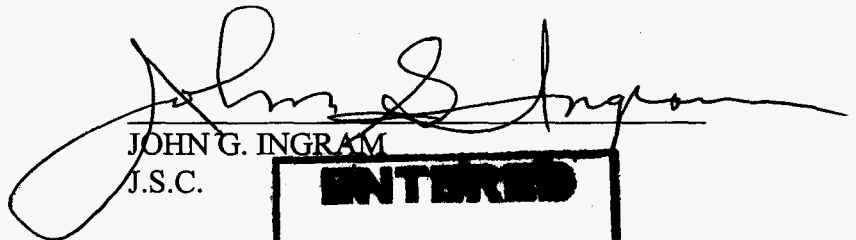
Defendant's final claim is that the evidence was legally insufficient to support the jury's determination that Defendant's conduct was the direct cause of the Bunkless Bovian's injury. Defendant asserts that there were contradictions in the People's evidence as to whether or not the skull fracture sustained by Bunkless was caused by Defendant striking him with a hammer. The People must prove that Defendant's conduct was a "sufficiently direct cause" of the complainant's injury." People v. Darrow, 260 A.D.2d 928 (3rd Dept. 1999), quoting People v. Stewart, 40 N.Y.2d 692(1976). Viewing the evidence in the light most favorable to the People, a

rational jury could have found that Defendant caused the serious physical injury to Bunkless beyond a reasonable doubt. The People presented witnesses who testified that they observed the Defendant strike Bunkless in the head with a hammer. Finesse Young and Nakira Braan testified that Defendant struck Bunkless in the head with a hammer. Dr. Baldauf testified that Bunkless' head injury was consistent with being struck with a hammer. In addition, the DVD showed Defendant swinging the hammer in the direction of Bunkless' head. Based on the evidence, the jury could reasonably infer that Defendant's conduct caused the injuries to Bunkless Bovian. Defendant's claim, that Bunkless' injury was the result of him striking his head on the counter, was contradicted by the DVD and the testimony of the People's witnesses. "The jury's verdict should not be disturbed unless it is clearly unsupported by the record." People v. Cummings, 291 A.D.2d 454 (2d Dept. 2002). Viewing the evidence in a light most favorable to the People, "there is a valid line of reasoning and permissible inferences" which could lead the jury to conclude that Defendant's conduct directly caused the injuries to Bunkless. People v. Thomas, 274 A.D.2d 761, 763 (3rd Dept. 2000).

Accordingly, Defendant's motion is denied.

This opinion constitutes the Decision and Order of this Court.

Dated: July 9, 2009
Brooklyn, New York


JOHN G. INGRAM
J.S.C.

