

People v Lawrence

2014 NY Slip Op 34053(U)

May 19, 2014

Supreme Court, New York County

Docket Number: Indictment Number 01470/2012

Judge: Juan M. Merchan

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CRIMINAL TERM: PART 59

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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

:
: DECISION AND ORDER

:
: Indictment Number 01470/2012

CURTIS LAWRENCE,

:
: Defendant.

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APPEARANCES: For the People of the State of New York:
Cyrus R. Vance, New York County District Attorney
By: Germaine Corprew, Esq.
Assistant District Attorney

For the Defendant:
James Phillips, Esq.
100 Lafayette Street, Suite 404
New York, New York 10013

HON. JUAN M. MERCHAN, A.J.S.C.:

Following a jury trial, Defendant was convicted of Attempted Robbery in the First Degree in violation of Penal Law §§ 110/160.15(2) and (4), Attempted Robbery in the Second Degree in violation of Penal Law §§ 110/160.10(1), and Criminal Possession of a Weapon in the Second Degree in violation of Penal Law §§ 265.01(1)(b) and (3). Defendant now moves, pursuant to Criminal Procedure Law § 330.30(1), to set aside the verdict on the grounds: that he was denied his right to a speedy trial; and that the verdicts were legally insufficient and against the weight of the evidence. For the reasons which follow, the court denies the motion.

Pursuant to CPL § 330.30(1), a defendant may move after a verdict but prior to sentencing to set aside or modify a verdict on “[a]ny ground appearing in the record which, if raised upon an

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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,” CPL § 330.30(1); *see also People v. Medina*, 11 A.D.3d 331 (1st Dept. 2004), including, but not limited to, legal insufficiency of the evidence to support the charges for which defendant was convicted, *see People v. Danielson*, 9 N.Y.3d 342, 348 (2007).

Speedy Trial Claim

Defendant claims that it was reversible error for Justice Charles Solomon to deny his two successive speedy trial motions. While this Court notes that Defendant fails to set forth any argument as to why Justice Solomon’s rulings were in error or cite to any supporting authority, this part of Defendant’s CPL § 330.30 motion seeks essentially to reargue the denial of his prior speedy trial motions that were made before Justice Solomon which is improper.¹ *See People v. Solomon*, 91 Misc.2d 760, 765-766 (Crim. Ct. N.Y. Cty. 1977) (a judge may not sit in review of a decision of another judge of concurrent jurisdiction). Thus, Defendant’s speedy trial claim is denied. *See People v. Jules*, 2 Misc.3d 1002(A), *5 (Sup. Ct. Kings Cty. 2004) (a defendant may not seek to reargue a prior judge’s speedy trial ruling through a CPL § 330.30 motion).

Legal Sufficiency and Weight of the Evidence Claims

Defendant essentially claims that the evidence was legally insufficient to establish his identity as one of the perpetrators of the crime for which the jury convicted him, *to wit*, that the two eyewitnesses had difficulty identifying him at trial and that the DNA expert was unqualified to

¹Notwithstanding the impropriety of Defendant’s claim at this juncture, it also appears that this Court may not entertain a post-trial speedy trial motion because the language of CPL § 330.30 provides for a trial court to “set aside or modify the verdict or any part thereof.” The statute does not empower this Court post-trial to dismiss the indictment for a speedy trial violation. *Compare* CPL § 210.20(g) *with* CPL § 330.30.

testify as an expert with regard to “statistical significance of DNA profiles.” Additionally, Defendant claims that the verdict was against the weight of the evidence.

Before turning to Defendant’s legal sufficiency complaints and as the People correctly argue, this Court notes that a weight of the evidence claim is improper on a CPL § 330.30 motion. *See People v. D’Allesandro*, 184 A.D.2d 114, 117-118 (1st Dept. 1992). Thus, that claim is rejected.

With respect to Defendant’s legal sufficiency claim, the standard for review is “whether there is any valid line of reasoning and permissible inferences which could lead a rational person to the conclusion reached by the [fact-finder] on the basis of the evidence at trial.” *People v. Mateo*, 2 N.Y.3d 383 (2004), quoting *People v. Bleakley*, 69 N.Y.2d 490, 495 (1987); see also *People v. Contes*, 60 N.Y.2d 620, 621 (1983). In making this assessment, a reviewing court must view all the evidence in the light most favorable to the People. *Mateo*, 2 N.Y.3d at 409; *Contes*, 60 N.Y.2d at 621. “It is also settled that a defendant’s guilt may be established through the introduction of circumstantial evidence when ‘the hypothesis of guilt [flows] naturally from the facts proved and [is] consistent with them.’” *People v. Rush*, 242 A.D.2d 108, 109 (2d Dept., 1998).

In *Rush*, the rape victim had misidentified the defendant at trial, however, “[t]he principle evidence implicating the defendant in the commission of the crimes was a DNA profile, which revealed that his DNA matched the DNA of a semen sample recovered from the victim.” *Rush*, 242 A.D.2d at 109. Moreover, “[t]he profile established that the likelihood of another person having the same DNA profile was one in 500 million.” *Id.* at 109. On appeal, the defendant claimed that “since DNA evidence is circumstantial in nature and is not absolute, such evidence cannot serve to prove his guilt beyond a reasonable doubt under the circumstances presented.” *Id.* The Second Department disagreed, finding that “[t]he un rebutted scientific testimony introduced by the People

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established that the DNA recovered from the crime scene matched the defendant's DNA," and that such "evidence constituted highly probative evidence that the jury could properly credit as establishing the defendant's guilt beyond a reasonable doubt." *Id.* at 110.

Here, viewing the evidence in the light most favorable to the People, *see Contes*, 60 N.Y.2d at 621, this Court finds that the evidence was legally sufficient to establish Defendant's identity as one of the perpetrators of the attempted robbery. Police found Defendant's DNA on the gun used in the attempted robbery. Balla Wagnane, an eyewitness who struggled with the perpetrator to possess the perpetrator's gun, identified Defendant at trial and Defendant matched the description Mr. Wagnane gave police shortly after the incident. Given that Defendant's DNA was found on the gun, the testimony of Defendant challenging the aforementioned evidence, *to wit*, that he never touched the gun used in the robbery, "presented credibility issues appropriately left for resolution by a jury to whom [this Court] accord[s] great deference." *People v. Lozada*, 41 A.D.3d 1042, 1043 (3d Dept. 2007).

Moreover, Defendant's challenge to this Court recognizing the People's proffered expert as an expert in the field, among others, of statistical significance of DNA profiles is without merit. The Court's recognition of the People's expert in this field signifies that the expert is qualified to render an opinion as to whether the Defendant's DNA profile matched the DNA found on the gun, not as to the mathematical underpinnings of the DNA testing. *See People v. Washington*, 108 A.D.3d 576, 577 (2d Dept. 2013). Based on her experience in the field, the expert properly testified that Defendant's DNA profile matched the DNA profile found on the trigger, the trigger guard, back strap, side grips and front strap of the gun and that the likelihood of another person sharing the same DNA as Defendant was one in five-hundred and thirteen billion people. Furthermore, the DNA


profile of one of the complainants was found on the gun which was consistent with him struggling with the perpetrator to gain control of the gun during the robbery.

Therefore, viewed in the light most favorable to the People, the evidence was legally sufficient to support the jury's verdict. *See Bleakley*, 69 N.Y.2d at 495.

Accordingly, Defendant's CPL § 330.30 motion is hereby denied.

The above constitutes the decision and order of this Court.

Dated: May 19, 2014
New York, New York



Juan M. Merchan
Judge of the Court of Claims
Acting Justice - Supreme Court

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HON. JUAN M. MERCHAN