

**People v Jenkins**

2021 NY Slip Op 34003(U)

November 16, 2021

Supreme Court, Westchester County

Docket Number: Ind. No. 20-00233-01

Judge: Robert A. Neary

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NOV 17 2021

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

**FILED  
AND  
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ON 11-17-2021  
WESTCHESTER  
COUNTY CLERK**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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

- against -

MICHAEL JENKINS,

Defendant.

-----X

NEARY, J.

DECISION AND ORDER

Ind. No. 20-00233-01

The defendant moves for an order of this Court vacating a jury verdict of guilty. The defendant contends that errors occurred on the record at trial, resulting in prejudice to the defendant and which requires reversal of the conviction or a reduction of the conviction. The People oppose the defendant's motion in all respects.

Pursuant to CPL §330.30(1), at any time after the rendition of a verdict of guilty and before the imposition of sentence, a defendant may move, *inter alia*, to set aside the verdict

on “any ground appearing in the record, 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.” Since the authority to set aside a verdict is limited to grounds which would require reversal or modification on appeal, only an error of law which has been properly preserved for appellate review may serve as a basis for setting aside the verdict. [See *People v. Hines*, 97 NY2d 56, 61, 736 NYS2d 643, 762 NE2d 329; *People v. Josey*, 204 AD2d 571, 612 NYS2d 170; *People v. Amato*, 238 AD2d 432, 433, 656 NYS2d 360, *appeal denied* 90 NY2d 937, 664 NYS2d 756, 687 NE2d 653; *People v. Thomas*, 8 AD3d 303, 777 NYS2d 673, *lv. denied* 3 NY3d 682, 784 NYS2d 9, 817 NE2d 827].

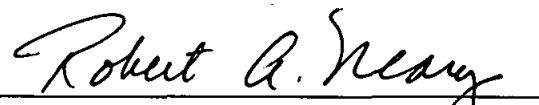
A trial court is limited under CPL §330 to examining issues of law, whereas an appellate court may delve in matters of fact. [See *People v. Carter*, 63 NY2d 530, 473 NE2d 6, 483 NYS2d 654 (1984); see also *People v. Ponnappula*, 229 AD2d 257, 655 NYS2d 750 (1<sup>st</sup> Dept., 1997)]. The court’s inquiry is limited to determining the legality of a verdict. [See *People v. Trimm*, 252 AD2d 673, 675 NYS2d 241 (3<sup>rd</sup> Dept., 1998)]. In deciding a CPL §330 motion, every instance must be judged in favor of the People. [See *People v. Floyd*, 176 AD2d 554, 574 NYS2d 733 (1<sup>st</sup> Dept., 1991), *lv. denied* 79 NY2d 827, 588 NE2d 105, 580 NYS2d 207, 580 NYS2d 214 (1992)]. In addition, a trial court has no power to set aside a jury verdict on its own weighing of the evidence. [See *People v. Goodfriend*, 64 NY2d 695, 474 NE2d 1187, 485 NYS2d 519 (1984)]. A trial court is only empowered to determine whether the evidence was legally sufficient to establish a defendant’s guilt; it is the jury that is empowered to assess the

evidence and determine the case based on its collective evaluation thereof. [See *People v. Garcia*, 237 AD2d 42, 668 NYS2d 5 (1<sup>st</sup> Dept., 1988)].

The Court finds that the defendant has failed to demonstrate that the alleged errors would require reversal or modification as a matter of law. The defendant's argument that the Court erred in permitting the admission of evidence connecting him with the possession of a gun prior to the crimes charged in the indictment is directed to the Court's exercise of discretion which is fact based. By its very nature, this type of discretionary ruling can never be a basis for reversal as a matter of law. Moreover, the Court finds that the evidence presented at trial was legally sufficient to establish the defendant's guilt beyond a reasonable doubt of all the crimes for which he stands convicted. The motion is, therefore, denied in its entirety.

This constitutes the opinion, decision and order of this Court.

Dated: White Plains, New York  
November 16, 2021

  
ROBERT A. NEARY  
SUPREME COURT JUSTICE

Steven A. Bender  
Assistant District Attorney  
Westchester County  
Office of the District Attorney  
Richard J. Daronco Courthouse  
111 Martin Luther King Blvd.  
White Plains, New York 10601  
[sbender@westchesterda.net](mailto:sbender@westchesterda.net)

*People v. Michael Jenkins*  
Indictment No. 20-00233-01

Nicholas W. Hicks, Esq.  
Samuel P. Davis, Esq.  
Attorneys for Defendant  
37 Franklin Street, 10<sup>th</sup> Floor  
Buffalo, New York 14202  
[nicholashicks.esq.@gmail.com](mailto:nicholashicks.esq.@gmail.com)