

People v Vincent

2022 NY Slip Op 34625(U)

September 28, 2022

County Court, Westchester County

Docket Number: Ind. No. 19-0544

Judge: George E. Fufidio

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COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

- against -

FILED

DECISION AND ORDER

Ind. No. 19-0544

RICHARD VINCENT,

SEP 29 2022

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

-----X
FUFIDIO, J.

The Defendant, Richard Vincent, moves for an order pursuant to CPL 330.30 to set aside the non-jury trial verdict that convicted him of one count of manslaughter in the first degree. The defendant was acquitted of one count of murder in the second degree. In rendering this Decision and Order, the Court has considered the Defendant's motion, the People's Affirmation of Opposition and Memorandum of Law and presumably by way of reply, two letters from the Defendant dated September 14, 2022 and September 15, 2022, in which he asked the Court to consider several cases not cited in his original motion.

In the Defendant's motion he argues his guilty verdict should be set aside pursuant to CPL 330.30 because, primarily, "there was no evidence presented to the Court at the trial showing that the defendant intended to cause physical injury to the victim, Randy Street ("Randy")," and concomitantly, "...the only evidence presented to the Court showed that the defendant had a valid justification defense in that it was Randy who was about to use deadly physical force against the defendant." Secondly in a series of letters dated September 14, 2022 and September 15, 2022, he argues that because, "there is nothing on the record indicating whether the not guilty verdict on the Murder charge was based on justification" and therefore, according to *People v Feuer*, 11 AD3d 633 [2nd Dept. 2004] and *People v Valentin*, 154 AD3d 474 [1st Dept. 2017], it was impossible to discern whether the acquittal on the Attempted Murder charge was based on justification...." In essence, the Defendant is arguing that the Court should have credited his justification defense and that based upon the verdict, it is impossible to tell whether or not it did with respect to the murder acquittal.

After a verdict is rendered and before sentence is imposed, a defendant may move 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,” (CPL 330.30[1]). 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 [2001]; *People v Josey*, 204 AD2d 571 [2d Dept 1994]; *People v Amato*, 238 AD2d 432, 433 [2d Dept 1997]; *People v Thomas*, 8 AD3d 303 [2d Dept 2004]). The Defendant’s motion is denied for the following reasons:

In the Defendant’s first argument in which he has challenged the sufficiency of the People’s evidence on the intent to cause serious bodily harm element, he claims that the only conclusion the Court could have drawn from the facts presented was that the Defendant acted in self-defense, a defense that was put forth almost entirely through the Defendant’s own testimony. The Defendant moved at the close of the People’s case and then again at the close of his own case for a trial order of dismissal, both of which were denied. The Court finds that line of argument is improperly preserved because the arguments he made in support of his motions were general, unelaborated and lacked the specificity that is required when arguing against a crime’s *mens rea* element (*People v Hawkins*, 11 NY3d 484 [2008]). In any event, the standard for setting aside a verdict under CPL 330.30 is, after viewing the evidence and the reasonable inferences drawn from it, in the light most favorable to the People, could *any* rational trier of fact have found that the People proved the essential elements of the charged crime beyond a reasonable doubt (*People v Contes*, 60 NY2d 620 [1983]). It is evident that when applying the law to even the barest recitation of facts presented; that is that the Defendant who was armed with a knife, fought with the victim and slashed the victim’s neck with the knife that this standard has been met (*see e.g.; People v Gilford*, 65 AD3d 840 [1st Dept. 2009]; *People v Elliot*, 299 AD2d 731 [3rd Dept. 2002]).

Intermingled with the Defendant’s first claim is his second claim; that the Court should have credited his justification defense as the only substantive evidence presented as to what happened and the Court should have acquitted him of the manslaughter charge as well, or alternatively, he argues that it is impossible to discern whether the Court did or did not credit his defense.

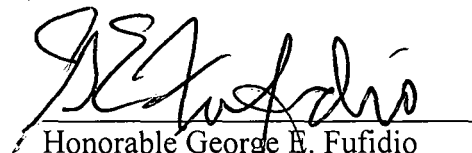
To begin, it is long settled that credibility issues are the provenance of the fact finder; a jury in a jury trial or a judge in a bench trial, and such credibility determinations are given great deference (*People v McCoy*, 100 AD3d 1422 [4h Dept. 2012]). Indeed, despite often knowing

more about the case and the Defendant than a jury would, courts are presumed to be fair and impartial when presiding over bench trials (*People v Harris*, 133 AD2d 649 [2nd Dept. 1987]). Here, the Court, as fact finder, did not credit the Defendant's justification defense. Continuing, while this Court did discharge its responsibility pursuant to CPL 320.20[5], by informing the parties which charges and defenses it would consider during its deliberation, the trial judge presiding over a bench trial is not required to state factual findings in reaching their verdict (*People v Carter*, 63 NY2d 530 [1984]) nor articulate a basis for the verdict (*People v Cunningham*, 95 NY2d 909 [2000]). Further, in contrast to lay jurors, trial judges are presumed to know the law and apply it correctly (*People v Stevenson*, 63 AD3d 966 [2nd Dept. 2009]). As the Defendant has pointed out, by a series of cases, *People v Velez*, 131 AD3d 129 [1st Dept. 2015]; *People v Valentin*, 154 AD3d 474 [1st Dept. 2017]; *People v Feuer*, 11 AD3d 633 [2nd Dept. 2004] and *People v Roberts*, 280 AD2d 415 [1st Dept. 2001]), a jury is required to be instructed that an acquittal of murder in the second degree based on a justification defense necessarily precludes a conviction on a manslaughter in the first degree charge. However, the cases that the Defendant has cited are distinguishable in that they find fault with the failure of the trial court to properly instruct the fact finding jury, but because of the presumption explained in *Stevenson, supra*, the Court does not need to instruct itself. A jury, unlike a fact finding judge, is not presumed to know the law and needs to be instructed on it, which is why the failure to instruct them properly was problematic in the cases the Defendant cited (*People v Ciaccio*, 47 NY2d 431, 436 [1979])[Courts are *required* to inform the jury of fundamental criminal law principals as well as the legal principals that apply to each particular case and the application of the law to the facts][*emphasis added*]). Once the jury is instructed, they are presumed to have followed the instructions (*People v Daughtry*, 260 AD2d 396 [2nd Dept. 1999]). The Defendant has not shown that the Court incorrectly applied the law. Here, the Court did not credit the Defendant's testimony regarding his justification defense and the Defendant has not shown that the presumption that the Court correctly applied the law is inapplicable in this case. The verdicts themselves are not repugnant, it is entirely permissible, in the absence of a credible justification defense, to acquit a defendant of murder in the second degree and convict him of manslaughter in the first degree (*see, e.g. People v Stevenson*, 63 AD3d 966 [2nd Dept. 2009]). As the Defendant has pointed out, by a series of cases, *People v Velez*, 131 AD3d 129 [1st Dept. 2015]; *People v Valentin*, 154 AD3d 474 [1st Dept. 2017]; *People v Feuer*, 11 AD3d 633 [2nd Dept. 2004] and *People v Roberts*, 280 AD2d 415 [1st Dept. 2001]).

Accordingly, it is hereby ordered that the motion is DENIED in its entirety.

The foregoing constitutes the opinion, decision and order of this court.

Dated: White Plains, New York
September 28, 2022


Honorable George E. Fufidio
Westchester County Court Judge

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