

People v Bobbitt

2023 NY Slip Op 34653(U)

February 27, 2023

Supreme Court, Westchester County

Docket Number: Ind. No. 20-70275-001

Judge: Robert A. Neary

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COUNTY OF WESTCHESTER

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ENTERED
ON 2-27-2023
WESTCHESTER
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
-----X
THE PEOPLE OF THE STATE OF NEW YORK

- against -

DECISION AND ORDER

JOHN BOBBITT,

Ind. No. 20-70275-001
(20-00274)

Defendant.

-----X

NEARY, J.

The defendant moves for an order of this Court vacating a jury verdict of guilty pursuant to CPL Section 330.30(1). On February 7, 2023, the defendant was convicted of Murder in the Second Degree and Criminal Possession of a Weapon in the Second Degree. The People oppose the defendant's motion in all respects.

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

on “any ground appearing in the record, which if raised on appeal from a prospective judgment of conviction, would require reversal as a matter of law by an appellate court.” Since the authority to set aside a verdict is limited to grounds that 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].

In support of his motion, the defendant asserts that when considered together, expert and eyewitness testimony clearly establish that it was scientifically established that he was not in a position to fire the fatal shots and, thus, reasonable doubt exists as to the identity of the defendant as the shooter. Further, the defendant contends that there were significant inconsistencies by and among the testimony of civilian, expert, and police witnesses. The defendant argues that these inconsistencies, when weighed in conjunction with certain other expert testimony, rise to the level of reasonable doubt requiring reversal of his convictions.

The People respond that: (1) the defendant’s current arguments were not made before the trial court in support of his CPL Section 290.20 motion for dismissal and, thus, are unpreserved and do not constitute a record based claim requiring appellate reversal as a matter of law and are lacking in merit and (2) a trial court may set aside a conviction “*only* if based upon

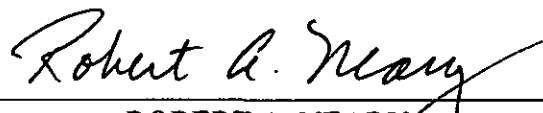
insufficient evidence or evidence which as a *matter of law* was inadequate to prove guilt beyond a reasonable doubt.” [See *People v. Carter*, 63 NY2d 530 at 537].

The Court finds that the defendant has failed to demonstrate that his current arguments were preserved before the trial court and had they been so preserved those arguments center around issues of credibility generally resolved, as here, by the jury as the trier of facts. [See *People v. Rojas*, 61 NY2d 726; *People v. Sanchez*, 131 AD2d 605 (2nd Dept.)]. The Court also finds that the credibility and other issues raised by the defendant would not as a matter of law rise to the level requiring modification or reversal by an appellate court. [See *People v. Patino*, 259 AD2d 502, *lv. denied* 93 NY2d 976].

For the reasons stated above, the defendant’s motion to set aside the jury verdict is denied in its entirety.

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

Dated: White Plains, New York
February 27, 2023


ROBERT A. NEARY
SUPREME COURT JUSTICE

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Indictment No. 20-70275-001 (20-00274)

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