

People v Crewe

2007 NY Slip Op 34578(U)

December 12, 2007

Supreme Court, Westchester County

Docket Number: 07-1077-4

Judge: James W. Hubert

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This opinion is uncorrected and not selected for official publication.

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

FILED
AND
ENTERED
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WESTCHESTER
COUNTY CLERK

-against-

CARLOS JEAN-BAPTISTE a/k/a "C.J."
LLOYD BRAHAM; WARREN DAVIS a/k/a "STONE"
ANDREW CREWE a/k/a "KILLER"

Defendants.

-----X
Hubert, J.

Ind. No. 07-1077-4

FILED
AUG 04 2008
TIMOTHY C. EDWARDS
COUNTY CLERK
COUNTY OF WESTCHESTER

On June 10, 2008, defendant Andrew Crewe was convicted after a three-week jury trial of six counts of robbery in the first degree, three counts of burglary in the first degree, and criminal possession of a weapon in the second degree. He was acquitted of two counts of murder in the second degree. The trial evidence established that on June 29, 2007, the defendant acted as a get-away driver for four other individuals who committed the crimes of murder, robbery and burglary at the residence of Neville and Michael Brett at 138 West 4th Street in Mount Vernon, New York. The evidence included, *inter alia*, the testimony of two surviving victims, as well as the testimony of police officers, forensic scientists, and medical examiners.

In a video-taped statement admitted into evidence, Crewe admitted that he knew the defendants had planned to commit a robbery and burglary at the Brett residence, and purposefully drove them to and from the area immediately before and after the crimes occurred. At trial, however, the defendant denied that he had knowingly and intentionally acted as the getaway driver. He testified that he did not know that any of the co-defendants were armed or had planned the crime, but instead dropped them off and had walked to a nearby store to buy

cigarettes. When he returned, the co-defendants also returned to the car and excitedly told him to drive away. Crewe testified that he didn't learn about the crime until after it had occurred.

The defendant now moves pursuant to Criminal Procedure Law § 330.30 (1), to set aside the jury's verdict. The defendant argues that the facts established at trial did not establish the "community of purpose" necessary for a finding of accessorial liability and that the evidence was insufficient to show that he intentionally aided the co-defendants in the commission of the crime. *See* Penal Law § 20.00; *People v. Allah*, 71 N.Y.2d 830, 527 N.Y.S.2d 731 (1988). Specifically, he contends that a reasonable fact-finder could not have concluded, beyond a reasonable doubt, that the defendant knew about the existence of any weapons and that the statement made by one of the perpetrators to the effect of "yo we gonna run up in da crib" could be interpreted to mean that the defendants were going to commit a robbery and burglary at the Brett residence.

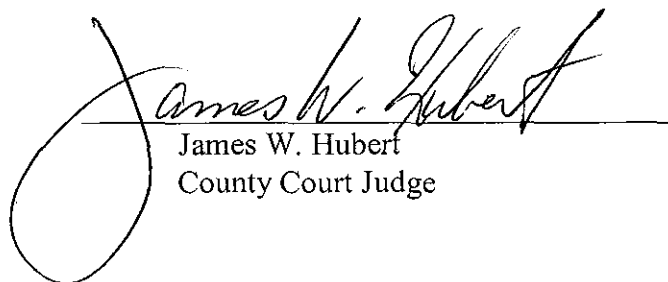
Although characterized as a sufficiency of the evidence issue, the Court finds that the defendant is, in reality, challenging the weight of the evidence adduced at trial because he is asking the Court to weigh the probative force of the conflicting testimony and the relative strength of conflicting inferences that may be drawn from the testimony. *People v. Bleakley*, 69 N.Y.2d 490, 495 (1987). In *Bleakley*, the Court of Appeals explained the different analyses when reviewing "weight of the evidence" and "insufficient evidence" challenges. In reviewing the legal sufficiency of a verdict, this Court "must determine whether there is any valid line of reasoning and permissible inferences which could lead a rational person to the conclusion reached by the jury . . . and as a matter of law satisfy the proof and burden requirements for every element of the crime[s] charged." *Id.* at 495 (citations omitted). As the Court made clear in *People v. Romero*, 7 N.Y.3d 633, 826 N.Y.S.2d 163 (2006), a weight of the evidence review

requires a court first to determine whether an acquittal would not have been unreasonable. If so, the court must then weigh conflicting testimony, review any rational inferences that may be drawn from the evidence, and evaluate the strength of such conclusions. Based on the weight of the credible evidence, the court then decides whether the jury was justified in finding the defendant guilty beyond a reasonable doubt. The court essentially sits as a thirteenth juror. *See Tibbs v Florida*, 457 U.S 31, 102 S.Ct. 2211 (1982).

This is precisely what the defendant asks the Court do to: to determine that the jury improperly selected between competing inferences and conflicting testimony. However, the Court is not permitted to reassess the fact-specific credibility judgments by the jury or weigh conflicting testimony on a CPL § 330.30 motion.¹ It is well-settled that a trial judge may not engage in a post-verdict weight of the evidence analysis. *People v. Carter*, 63 NY2d 530, 483 N.Y.S.2d 654 (1984). Accordingly, the defendant's motion is denied.

The foregoing constitutes the Decision and Order of the Court.

Dated: White Plains, New York
July 31, 2008


James W. Hubert
County Court Judge

¹Moreover, even if the Court agreed that the defendant's claim is for legal insufficiency, his general objection at trial was not sufficient to preserve the issues he now raises. *See People v. Gray*, 86 N.Y.2d 10, 19, 629 N.Y.S.2d 173 (1995) (motion to dismiss must be "specifically directed" at the legal insufficiency to preserve issue for appeal); *People v. Ferraro*, 49 A.D.3d 550, 855 N.Y.S.2d 552 (2d Dep't 2008)(defendant's challenge to legal sufficiency of evidence unpreserved for appellate review, since defense counsel made only a general motion to dismiss that indictment and did not elaborate with specific facts or grounds the basis for dismissal).

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