

People v Escamilla

2015 NY Slip Op 32893(U)

September 3, 2015

Supreme Court, Kings County

Docket Number: 5027/2012

Judge: Danny K. Chun

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM PART 19

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THE PEOPLE OF THE STATE OF NEW YORK :

: MOTION TO SET ASIDE
: VERDICT

-against- :

: DECISION AND ORDER

ALEX ESCAMILLA, :

: IND. NO. 5027/2012

Defendant. :

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DANNY K. CHUN, J.

The defendant moves pursuant to CPL § 330.30 for an order setting aside the verdict, arguing that (1) there is no credible evidence implicating the defendant; (2) YouTube videos and Facebook posts entered into evidence was far more prejudicial than it was probative; (3) there is no evidence that the defendant acted in concert with others in slashing the complainant Angel Reyes; and (4) the People’s summation was improper and prejudicial to the defendant. The defendant is currently awaiting sentencing. The People oppose the defendant’s motion. For the following reasons, the defendant’s motion is denied.

The defendant was charged, under Kings County indictment number 5027/2012, with one count of Murder in the Second Degree (PL § 125.25[1]), three counts of Attempted Murder in the Second Degree (PL §§ 110/125.25[1]), three counts of Assault in the first Degree (PL § 120.10[1]), three counts of Gang Assault in the First Degree (PL § 120.07), three counts of Gang Assault in the Second Degree (PL § 120.06), six counts of Assault in the Second Degree (PL § 120.05[1], [2]) and one count of Criminal Possession of a weapon in the Fourth Degree (PL § 265.01[2]). After the People rested, the following counts pertaining to complainants Danny Marmolejo and Estaban Tlatelpa were dismissed: two counts of Attempted Murder in the Second

Degree (PL §§ 110/125.25[1]), two counts of Assault in the First Degree (PL § 120.10[1]), two counts of Gang Assault in the First Degree (PL § 120.07), two counts of Gang Assault in the Second Degree (PL § 120.06) and four counts of Assault in the Second Degree (PL § 120.05[1], [2]). On May 26, 2015, following a jury trial, the defendant was found guilty of all the counts.

The defendant argues that his verdict should be set aside for the following reasons. First, the defendant argues that the only witness that identified the defendant is not credible, and therefore, there is no credible testimony implicating the defendant. Second, the defendant argues that the evidence from YouTube videos and Facebook posts regarding the Coney Island Warriors gang and the defendant's membership in the gang to show motive for the alleged crimes committed is far more prejudicial than probative. Third, the defendant argues that there is no evidence that the defendant solicited, commanded, requested or intentionally aided others in slashing the complainant Angel Reyes. Lastly, the defendant contends that the following comments made by the People during summation amounted to prosecutorial misconduct, and was so prejudicial as to require the verdict to be set aside: (1) the use of the words "intent to war," in the PowerPoint the People used for their summation, despite the Judge's ruling not to mention "gang war;" (2) the use of the DD-5 in the PowerPoint the People used for their summation, which was not allowed to be entered into evidence, with the word "obscenity" in describing the defense counsel's objection to the People's attempt to offer it into evidence; (3) the improper burden shifting to the defendant by the comment that the defendant waited for eight days before surrendering and the comment on what an innocent person would have told the police; and (4) the People's improper instruction on the law of acting in concert when the People implied that if the defendant had not tried to stop the assault, he was acting in concert.

The People argue that the defendant's claims of summation error are meritless, and any possible errors were harmless in light of the court's instructions and the overwhelming evidence of the defendant's guilt.

CPL § 330.30 provides that, after a rendition of a verdict of guilty and before sentence, the court may, upon motion of the defendant, set aside the verdict when there is "[a]ny 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." The power granted a trial judge pursuant to CPL § 330.30 is limited to questions of law. People v. Carter, 63 NY2d 530, 536 (1984). A question of law includes, but is not limited to, a ruling duly protested by the defendant at the time of such ruling or instruction or any subsequent time when the court had an opportunity to effectively change the same. CPL § 470.05(2).

This court denies the defendant's motion for the following reasons.

Viewing the evidence as a whole and in the light most favorable to the People (See People v. Thompson, 72 N.Y.2d 410, 413; People v. Contes, 60 N.Y.2d 620, 621), this court finds that the evidence was sufficient to prove beyond a reasonable doubt on all the counts. One-witness identification is sufficient to support a judgment of conviction. People v. Morris, 100 A.D.2d 600, 600 (2d Dep't 1984). The issue of credibility is primarily for the jury, and this court found that there was sufficient evidence in quantity and quality to send this case to the jury for its verdict. People v. Joylens, 39 N.Y.2d 197, 203. In addition, this court charged the jury on one-witness identification following the Criminal Jury Instructions of the New York State Unified Court System. Based on the one witness's testimony identifying the defendant by his street

name, and the other corroborating evidence, this court finds that there was proof beyond a reasonable doubt on all counts.

The defendant's argument that the evidence of defendant's gang affiliation and the rivalry between the defendant's and the complainant's gangs were inflammatory and prejudicial is without merit. The defendant's membership in a gang was relevant to motive and intent, and explained the relationship between the defendant and the co-defendant and the complainants. People Oliver, 19 A.D.3d 512, 512 (2d Dept' 2005). The jury was instructed that the defendant was not charged with being a member of a gang, and such evidence should only be used as background information. Furthermore, since the complainants were also members of a gang or friends with the gang members and evidence that the complainants' gang had murdered a member of the defendant's gang in the past was introduced, this court finds that the defendant was not unduly prejudiced.

This court also finds that the defendant's argument that there was no evidence that the defendant acted in concert in slashing Angel Reyes is without merit. There was testimony and video evidence that: (1) the defendant exited a vehicle with three other individuals, (2) one of the individuals from the vehicle slashed Angel Reyes, (3) the other three including the defendant assaulted and killed Heriberto Guerrero and (4) within a minute after exiting the vehicle, all four ran back to their vehicle and left, coupled with the evidence regarding the rivalry between the defendant's and the complainant's gangs showed beyond a reasonable doubt that the defendant shared the intent to slash Angel Reyes and was "actually present."

The defendant's contention that he was denied a fair trial based upon allegedly improper comments made by the People during summation is also without merit. This court sustained the objections made by the defendant in connection to the People's comments relating to DD-5

shown in the People's summation, and thereby corrected any prejudice that may have been sustained by the defendant. See People v. Rogers, 106 A.D.3d 1029 (2d Dep't 2013). In addition, this court repeatedly instructed the jury that nothing said during summations constitutes evidence in this case, and gave the jury general instructions regarding sustaining objections at the beginning and the conclusion of the trial. Therefore, this court finds that the defendant was not substantially prejudiced by the People's comments so as to warrant setting aside the verdict. Furthermore, the rest of the People's comments were either responsive to the defense counsel's summation, fair comment on the evidence and reasonable inferences to be drawn therefrom, or permissible rhetorical comments. (see People v. Stewart, 89 A.D.3d 1044, 1045 [2d Dep't. 2011]; People v. Spencer, 87 A.D.3d 751, 753 [2011]; People v. Dorgan, 42 A.D.3d 505, 505 [2007]; People v. Barnes, 33 A.D.3d 811, 812 [2006]).

Wherefore, for the reasons stated above, the defendant's motion to set aside the verdict is denied in its entirety. The foregoing constitutes the decision and order of the court.

Dated: Brooklyn, New York
September 3, 2015



DANNY K. CHUN, J. S.C.