

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FOURTH JUDICIAL DEPARTMENT

People v. Jones

2022 NY Slip Op 07373 (N.Y. Ct. App. 2022) · No. 873 KA 21-00117 · Decided December 23, 2022

SUMMARY

The New York Appellate Division, Fourth Department unanimously affirmed Martha Jones's conviction for first-degree manslaughter arising from the fatal shooting of a neighbor. The court rejected challenges concerning the sufficiency and weight of the evidence, the denial of a CPL 330.30 motion, confrontation, cross-examination limits, ineffective assistance of counsel, and the severity of the sentence.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Whalen, P.J.; Peradotto, J.; Lindley, J.; Winslow, J.; Bannister, J.
JURISDICTION	New York
DECIDED	December 23, 2022
DOCKET	873 KA 21-00117
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a Monroe County Court judgment convicting her, upon a jury verdict, of manslaughter in the first degree.
STANDARD OF REVIEW	The court reviewed legal sufficiency by viewing the evidence in the light most favorable to the People and considered the weight-of-the-evidence claim by independently assessing the evidence in light of the elements of the crime as charged. Claims concerning cross-examination were reviewed for abuse of discretion, and ineffective-assistance claims were evaluated under New York's meaningful-representation standard.
PRECEDENTIAL VALUE	published
PARTIES	Martha Jones, defendant-appellant v. The People of the State of New York

TOPICS

criminal procedure

evidence

ineffective assistance

appellate procedure

preservation of error

PRACTICE AREAS

criminal law

criminal procedure

evidence

appellate practice

QUESTIONS PRESENTED

1. Whether the evidence was legally sufficient to support defendant's conviction for first-degree manslaughter.
2. Whether the verdict was against the weight of the evidence.
3. Whether County Court erred in denying defendant's CPL 330.30 (1) motion to set aside the verdict without conducting a hearing.
4. Whether defendant was denied the right to confront a witness who invoked the Fifth Amendment during cross-examination.
5. Whether the court improperly limited defendant's cross-examination of the medical examiner.
6. Whether defendant was denied effective assistance of counsel based on counsel's handling of the Huntley hearing, firearms evidence, missing video evidence, a potential defense witness, and the justification charge.
7. Whether defendant's sentence was unduly harsh or severe.

HOLDINGS

1. Defendant's conviction was supported by legally sufficient evidence.
2. The verdict was not against the weight of the evidence.
3. County Court properly denied defendant's motion to set aside the verdict without a hearing.
4. Defendant's confrontation claim was unpreserved and, in any event, lacked merit.
5. The trial court did not abuse its discretion by limiting defendant's cross-examination of the medical examiner.
6. Defendant was not denied effective assistance of counsel.
7. Defendant's sentence was not unduly harsh or severe and did not warrant modification.

KEY QUOTATIONS

“Although a different verdict would not have been unreasonable, it cannot be said that the jury failed to give the evidence the weight it should be accorded” ([*1])

“It cannot be said that defense counsel was ineffective for failing to make an objection that had “little or no chance of success”” ([*2])

FACTUAL BACKGROUND

Following an argument with a neighbor, defendant shot the neighbor in the right leg. The shot damaged the neighbor's femoral artery and ultimately caused his death. The prosecution also presented evidence concerning a rifle and projectile recovered from the area of the shooting, testimony from a medical examiner, and defendant's challenged interrogation and post-verdict claims.

PROCEDURAL HISTORY

Following an incident in which defendant shot a neighbor in the leg and the neighbor later died, a jury convicted defendant of first-degree manslaughter. Monroe County Court rendered judgment on October 2, 2020, and denied defendant's CPL 330.30 (1) motion to set aside the verdict without a hearing. The Appellate Division unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Gray, 86 NY2d 10, 19 [1995]
- People v. Bleakley, 69 NY2d 490, 495 [1987]
- People v. Danielson, 9 NY3d 342, 349 [2007]
- People v. Metales, 171 AD3d 1562, 1564 [4th Dept 2019], lv denied 33 NY3d 1107 [2019]
- People v. Wolf, 98 NY2d 105, 119 [2002]
- People v. Lewis-Bush, 204 AD3d 1424, 1427 [4th Dept 2022], lv denied 38 NY3d 1072 [2022]
- People v. Harris, 1 AD3d 881, 882 [4th Dept 2003], lv denied 2 NY3d 740 [2004]
- People v. DeCapua, 151 AD3d 1746, 1747 [4th Dept 2017], lv denied 29 NY3d 1125 [2017]
- People v. Wright, 38 AD3d 1232, 1233 [4th Dept 2007], lv denied 9 NY3d 853 [2007], reconsideration denied 9 NY3d 884 [2007]
- People v. Arroyo, 46 NY2d 928, 930 [1979]
- People v. Dekenipp, 105 AD3d 1346, 1348 [4th Dept 2013], lv denied 21 NY3d 1041 [2013]
- People v. Ennis, 107 AD3d 1617, 1619 [4th Dept 2013], lv denied 22 NY3d 1040 [2013], reconsideration denied 23 NY3d 1036 [2014]
- People v. Laracuenta, 21 AD3d 1389, 1391 [4th Dept 2005], lv denied 6 NY3d 777 [2006]
- People v. Jones, 73 NY2d 427, 430 [1989]
- People v. Hobot, 84 NY2d 1021, 1024 [1995]
- People v. Lewis, 192 AD3d 1532, 1533 [4th Dept 2021], lv denied 37 NY3d 993 [2021]
- People v. Scarola, 71 NY2d 769, 777 [1988]
- People v. Stultz, 2 NY3d 277, 287 [2004], rearg denied 3 NY3d 702 [2004]
- People v. Faison, 113 AD3d 1135, 1136 [4th Dept 2014], lv denied 23 NY3d 1036 [2014]
- People v. Durant, 26 NY3d 341, 348-350 [2015]
- People v. Handy, 20 NY3d 663, 665, 669 [2013]

- People v. Baker, 14 NY3d 266, 270-271 [2010]
- People v. Botting, 8 AD3d 1064, 1066 [4th Dept 2004], lv denied 3 NY3d 671 [2004]
- People v. Borczyk, 184 AD3d 1183, 1183-1188 [4th Dept 2020]
- People v. Ford, 114 AD3d 1221, 1221 [4th Dept 2014], lv denied 23 NY3d 962 [2014]

OPINION

PER CURIAM.

People v Jones (2022 NY Slip Op 07373) People v Jones 2022 NY Slip Op 07373 Decided on December 23, 2022 Appellate Division, Fourth Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on December 23, 2022 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Fourth Judicial Department PRESENT: WHALEN, P.J., PERADOTTO, LINDLEY, WINSLOW, AND BANNISTER, JJ. 873 KA 21-00117 [*1]THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, vMARTHA JONES, DEFENDANT-APPELLANT.

DAVID R. MORABITO, EAST ROCHESTER, FOR DEFENDANT-APPELLANT. SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (MARTIN P. MCCARTHY, II, OF COUNSEL), FOR RESPONDENT. Appeal from a judgment of the Monroe County Court (Michael L. Dollinger, J.), rendered October 2, 2020.

The judgment convicted defendant, upon a jury verdict, of manslaughter in the first degree. It is hereby ORDERED that the judgment so appealed from is unanimously affirmed. Memorandum: Defendant appeals from a judgment convicting her, upon a jury verdict, of manslaughter in the first degree (Penal Law § 125.20 [1]).

The conviction arises from an incident in which defendant, following an argument with a neighbor, shot the neighbor in the right leg, damaging his femoral artery and ultimately causing his death. To the extent that defendant preserved her contention that the conviction is not supported by legally sufficient evidence (see generally People v Gray, 86 NY2d 10, 19 [1995]), that contention lacks merit (see generally People v Bleakley, 69 NY2d 490, 495 [1987]).

Moreover, viewing the evidence in light of the elements of the crime as charged to the jury (see People v Danielson, 9 NY3d 342, 349 [2007]), we reject defendant's further contention that the verdict is against the weight of the evidence (see generally Bleakley, 69 NY2d at 495).

Although a different verdict would not have been unreasonable, it cannot be said that the jury failed to give the evidence the weight it should be accorded (see *id.*; People v Metales, 171 AD3d 1562, 1564 [4th Dept 2019], lv denied 33 NY3d 1107 [2019]). With respect to defendant's contention that County Court erred in denying without a hearing her motion to set aside the verdict

pursuant to CPL 330.30 (1), we note, initially, that certain allegations in support of the motion concerned matters that "were outside the record and for that reason could not be considered in a CPL 330.30 (1) motion" (*People v Wolf*, 98 NY2d 105, 119 [2002]; see *People v Lewis-Bush*, 204 AD3d 1424, 1427 [4th Dept 2022], lv denied 38 NY3d 1072 [2022]; see generally *People v Harris*, 1 AD3d 881, 882 [4th Dept 2003], lv denied 2 NY3d 740 [2004]).

To the extent that the motion was based upon matters appearing in the record, we conclude that the court did not err in denying the motion without a hearing (see *People v DeCapua*, 151 AD3d 1746, 1747 [4th Dept 2017], lv denied 29 NY3d 1125 [2017]). Defendant's contention that she was denied the right to confront a witness who invoked his Fifth Amendment right against self-incrimination when questioned on cross-examination about a pending criminal charge is unpreserved (see *People v Wright*, 38 AD3d 1232, 1233 [4th Dept 2007], lv denied 9 NY3d 853 [2007], reconsideration denied 9 NY3d 884 [2007]).

In any event, that contention lacks merit (see *People v Arroyo*, 46 NY2d 928, 930 [1979]; *People v Dekenipp*, 105 AD3d 1346, 1348 [4th Dept 2013], lv denied 21 NY3d 1041 [2013]). Nor did the court err in limiting defendant's cross-examination of the medical examiner who performed the victim's autopsy. Contrary to defendant's contention, the court did not abuse its discretion in determining that a line of questioning regarding a medical diagnosis that the victim had received and medication that he had been prescribed in connection with that diagnosis was outside the [*2]scope of direct examination (see generally *People v Ennis*, 107 AD3d 1617, 1619 [4th Dept 2013], lv denied 22 NY3d 1040 [2013], reconsideration denied 23 NY3d 1036 [2014]) and based on medical records that were not admitted in evidence (see *People v Laracuate*, 21 AD3d 1389, 1391 [4th Dept 2005], lv denied 6 NY3d 777 [2006]; see also *People v Jones*, 73 NY2d 427, 430 [1989]).

We also reject defendant's contention that she was denied effective assistance of counsel. With respect to defendant's claim that defense counsel was ineffective for failing to argue at the Huntley hearing that defendant invoked her right to counsel during her interrogation, the People did not introduce at trial any of the statements challenged by defendant at the Huntley hearing and, thus, defendant could not have been prejudiced by defense counsel's alleged failure in that respect (see generally *People v Hobot*, 84 NY2d 1021, 1024 [1995]; *People v Lewis*, 192 AD3d 1532, 1533 [4th Dept 2021], lv denied 37 NY3d 993 [2021]).

Furthermore, defense counsel was not ineffective for failing to object to certain testimony of a firearms examiner concerning the rifle and projectile that were recovered in connection with the incident. Both items were recovered from the area of the shooting, and testimony about their provenance was relevant (see generally *People v Scarola*, 71 NY2d 769, 777 [1988]).

Moreover, the testimony of the firearms examiner that he could not determine whether the projectile was fired from the rifle was, if anything, slightly favorable to defendant. It cannot be

said that defense counsel was ineffective for failing to make an objection that had "little or no chance of success" (People v Stultz, 2 NY3d 277, 287 [2004], rearg denied 3 NY3d 702 [2004]; see People v Faison, 113 AD3d 1135, 1136 [4th Dept 2014], lv denied 23 NY3d 1036 [2014]).

To the extent that defendant contends that defense counsel was ineffective for failing to request that an adverse inference instruction concerning missing video evidence be given to the jury, defendant failed to establish that such evidence was destroyed by agents of the government (see CJI2d[NY] Adverse Inference—Destroyed or Lost Evidence; see generally People v Durant, 26 NY3d 341, 348-350 [2015]; People v Handy, 20 NY3d 663, 665, 669 [2013]).

Although defendant further contends that defense counsel was ineffective for failing to call defendant's father as a witness, defendant failed to "demonstrate the absence of strategic or other legitimate explanations" for that alleged deficiency (People v Baker, 14 NY3d 266, 270-271 [2010] [internal quotation marks omitted]; see People v Botting, 8 AD3d 1064, 1066 [4th Dept 2004], lv denied 3 NY3d 671 [2004]; cf. People v Borcyk, 184 AD3d 1183, 1183-1188 [4th Dept 2020]).

In addition, because the court "did not erroneously instruct the jury regarding justification, defense counsel was not ineffective for failing to object to that charge" (People v Ford, 114 AD3d 1221, 1221 [4th Dept 2014], lv denied 23 NY3d 962 [2014]).

We reject defendant's contention that the sentence is unduly harsh and severe. Finally, we have considered defendant's remaining contentions and conclude that none warrants modification or reversal of the judgment. Entered: December 23, 2022 Ann Dillon Flynn Clerk of the Court