No. 18-7174

In The Supreme Court
Of The United States Of America

SHAWNDELL EVERSON,
Petitioner - Citizen Pro se

Vs.

The People of the State of New York
Respondent

PETITION FOR WRIT OF CERTIORARI

APPENDIX A
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APPENDIX A

New York State Court of Appeals, Decision and Order denying leave to appeal.

People v. Shawndell Everson, 31 N.Y.3d 1081.

People v. Everson
Court of Appeals of New York. | May 8, 2018 | Slip Copy | 31 N.Y.3d 1081 | 2018 WL 2946013 (Table) *(Approx. 1 page)*

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31 N.Y.3d 1081

(The decision of the Court of Appeals of New York is referenced in the New York Supplement and North Eastern Reporter as a decision without published opinion.)

Court of Appeals of New York.

PEOPLE

v.

EVERSON (Shawndell)

5/8/2018

4th Dept: 2/2/2018 (Onondaga)

Opinion

Stein, J.

*1 Applications in Criminal Cases for Leave to Appeal Denied

All Citations

Slip Copy, 31 N.Y.3d 1081, 2018 WL 2946013 (Table)

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APPENDIX B

New York State Court of Appeals Order Denying reconsideration application in Criminal Case for leave to appeal.

People v. Everson, 2018 WL 3811952.

People v. Everson
Court of Appeals of New York. | July 31, 2018 | Slip Copy | 2018 WL 3811952 (Table) *(Approx. 1 page)*

2018 WL 3811952 (Table)
(The decision of the Court of Appeals of New York is referenced in the New York Supplement and North Eastern Reporter as a decision without published opinion.)
Only the Westlaw citation is currently available.
Court of Appeals of New York.

PEOPLE

v.

EVERSON (Shawndell)

7/31/2018

4th Dept: 2/2/2018 (Onondaga)

Opinion

Stein, J.

*1 Applications in Criminal Cases for Leave to Appeal Denied Reconsideration

All Citations

Slip Copy, 2018 WL 3811952 (Table)

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APPENDIX C

Supreme Court of the State of New York, Appellate Division, Fourth Department's Order of Affirmance.

People v. Everson, 158 AD3d 1119 (Appeal No. 1)

People v. Everson, 158 AD3d 1123 (Appeal No. 2).

People v. Everson
Supreme Court, Appellate Division, Fourth Department, New York. February 2, 2018 | 158 A.D.3d 1119 | 70 N.Y.S.3d 301 | 2018 N.Y. Slip Op. 00714 (

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158 A.D.3d 1119
Supreme Court,
Appellate Division, Fourth Department, New York.

The PEOPLE of the State of New York, Respondent,

v.

Shawndell **EVERSON**, Defendant–Appellant. (Appeal No. 1.)

1205
KA 11–00995
Entered: February 2, 2018

Synopsis

Background: Defendant was convicted in the Onondaga County Court, William D. Walsh, J., of criminal possession of a weapon in the second degree, criminal possession of a weapon in the third degree, criminal sale of a firearm in the third degree, criminal possession of a controlled substance in the fifth degree, criminal sale of a controlled substance in the fifth degree, robbery in the first degree, burglary in the first degree, and conspiracy in the fourth degree. Defendant appealed.

Holdings: The Supreme Court, Appellate Division, held that:
1 venue was proper, and
2 notice to defendant of intention to offer evidence was not required with respect to statements that defendant made to accomplice concerning commission of robbery.

Affirmed.

West Headnotes (4)

Change View

1 **Criminal Law** Locality of Offense in General
Venue was proper, in prosecution for conspiracy in the fourth degree and related offenses, although defendant and his companions were stopped before they returned to county from Ohio; People established that, while in county, defendant conspired with others to traffic weapons. N.Y. CPL § 20.40(1)(b).

2 **Criminal Law** Notice
Notice to defendant of intention to offer evidence was not required with respect to statements that defendant made to accomplice concerning commission of robbery; those statements were made during private conversation between defendant and accomplice, and there was no evidence that, at time of that conversation, accomplice was acting at instigation or under supervision of police. N.Y. CPL § 710.30.

3 **Criminal Law** Course and conduct of trial in general
Defendant failed to preserve for appellate review contention that his right to public trial was violated when his family members and friends were excluded or removed from courtroom; none of the alleged violations of defendant's right to public trial was brought to court's attention at time when court could have taken remedial action.

1 Case that cites this headnote

4 **Criminal Law** Course and conduct of trial in general
While the right to a public trial is fundamental, a claim that such right was violated requires preservation.

Appeal from a judgment of the Onondaga County Court (William D. Walsh, J.), rendered March 2, 2011. The judgment convicted defendant, upon a jury verdict, of criminal possession of a weapon in the second degree (three counts), criminal possession of a weapon in the third degree (five counts), criminal sale of a firearm in the third degree (four counts), criminal possession of a controlled substance in the fifth degree (two counts), criminal sale of a controlled substance in the fifth degree (two counts), robbery in the first degree (two counts), burglary in the first degree and conspiracy in the fourth degree.

Attorneys and Law Firms

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SHAWNDELL **EVERSON**, DEFENDANT–APPELLANT PRO SE.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (VICTORIA M. WHITE OF COUNSEL), FOR RESPONDENT.

PRESENT: SMITH, J.P., CARNI, CURRAN, AND WINSLOW, JJ.

MEMORANDUM AND ORDER

Memorandum:

***1120 **302** In appeal No. 1, defendant appeals from a judgment convicting him upon a jury verdict of two counts of robbery in the first degree (Penal Law § 160.15[4]), one count each of burglary in the first degree (§ 140.30[4]) and conspiracy in the fourth degree (§ 105.10 [1]), and various other charges arising from the possession or sale of drugs and weapons. In appeal No. 2, defendant appeals from an order denying his motion to vacate the judgment of conviction pursuant to CPL 440.10.

Addressing appeal No. 1 first, we note that defendant was originally charged in three indictments that were later consolidated with crimes arising from eight separate incidents that occurred between November 2008 and April 2010.

1 We reject defendant's contention in his main brief that County Court lacked jurisdiction with respect to counts one through three of the consolidated indictment, charging crimes arising from defendant's possession and sale of a pistol that he acquired in the State of Ohio. The People established territorial jurisdiction within New York (*see* CPL 20.20[1][a], [c]). To the extent that defendant challenges venue in Onondaga County with

respect to counts one through three, we also reject that challenge. Although defendant and his companions were stopped on the Thruway before they returned to Onondaga County from Ohio, defendant was properly tried in Onondaga County, inasmuch as "[c]onduct occurred in such county sufficient to establish ... [a]n attempt or conspiracy to commit such offense[s]" (CPL 20.40[1][b]), i.e., the People established that, while in Onondaga County, defendant conspired with others to traffic weapons (*see People v. MacDonald*, 63 A.D.3d 1520, 1521, 880 N.Y.S.2d 799 [4th Dept. 2009], *lv denied* 13 N.Y.3d 746, 886 N.Y.S.2d 100, 914 N.E.2d 1018 [2009]).

The evidence, viewed in the light most favorable to the ***1121** People (*see People v. Contes*, 60 N.Y.2d 620, 621, 467 N.Y.S.2d 349, 454 N.E.2d 932 [1983]), is legally sufficient to support defendant's conviction of counts one through six (*see generally People v. Bleakley*, 69 N.Y.2d 490, 495, 515 N.Y.S.2d 761, 508 N.E.2d 672 [1987]). In addition, viewing the evidence in light of the elements of the crimes as charged to the jury (*see People v. Danielson*, 9 N.Y.3d 342, 349, 849 N.Y.S.2d 480, 880 N.E.2d 1 [2007]), we conclude that the verdict on those counts and the remaining counts is ***303** not against the weight of the evidence (*see generally Bleakley*, 69 N.Y.2d at 495, 515 N.Y.S.2d 761, 508 N.E.2d 672).

Defendant failed to preserve for our review his contention in his main brief that the conspiracy count was defective on the grounds that it alleged that defendant participated in multiple conspiracies (*see generally People v. Alfonso*, 35 A.D.3d 269, 269, 827 N.Y.S.2d 39 [1st Dept. 2006], *lv denied* 8 N.Y.3d 878, 832 N.Y.S.2d 490, 864 N.E.2d 620 [2007]), and it failed to specify the underlying crimes that were the objects of the alleged conspiracies (*see generally People v. Wong*, 133 A.D.2d 184, 185, 519 N.Y.S.2d 10 [2d Dept. 1987], *lv denied* 70 N.Y.2d 878, 523 N.Y.S.2d 506, 518 N.E.2d 17 [1987]). We decline to exercise our power to review that contention as a matter of discretion in the interest of justice (*see* CPL 470.15[6][a]).

2 Contrary to defendant's further contention in his main brief, the court properly concluded that a CPL 710.30 notice was not required with respect to statements that defendant made to an accomplice concerning the commission of a robbery. Those statements were made during a private conversation between defendant and the accomplice, and there was no evidence that, at the time of that conversation, the accomplice "was acting at the instigation or under the supervision of the police" (*People v. Jean*, 13 A.D.3d 466, 467, 786 N.Y.S.2d 564 [2d Dept. 2004], *lv denied* 5 N.Y.3d 764, 801 N.Y.S.2d 258, 834 N.E.2d 1268 [2005], *reconsideration denied* 5 N.Y.3d 807, 803 N.Y.S.2d 36, 836 N.E.2d 1159 [2005]).

The record does not support defendant's contention in his main brief that the court refused to rule on his midtrial severance motion. Rather, the record establishes that the court's willingness to consider severance was contingent upon defendant's decision whether to testify, and when defendant elected not to testify, the motion was "implicitly but conclusively denied" (*People v. Gates*, 152 A.D.3d 1222, 1223, 59 N.Y.S.3d 636 [4th Dept. 2017]; *see People v. Hampton*, 113 A.D.3d 1131, 1132, 977 N.Y.S.2d 859 [4th Dept. 2014], *lv denied* 22 N.Y.3d 1199, 986 N.Y.S.2d 419, 9 N.E.3d 914 [2014], *reconsideration denied* 23 N.Y.3d 1062, 994 N.Y.S.2d 321, 18 N.E.3d 1142 [2014], *cert denied* —— U.S. ——, 135 S.Ct. 2389, 192 L.Ed.2d 174 [2015]). The court, moreover, properly denied the motion, inasmuch as it was untimely (*see* CPL 255.20[1], [3]; *People v. Wilburn*, 50 A.D.3d 1617, 1618, 856 N.Y.S.2d 767 [4th Dept. 2008], *lv denied* 11 N.Y.3d 742, 864 N.Y.S.2d 401, 894 N.E.2d 665 [2008]), and defendant failed to demonstrate the requisite good cause for a

discretionary severance (*see People v. Vickers*, 148 A.D.3d 1535, 1536–1537, 50 N.Y.S.3d 668 [4th Dept. 2017], *lv denied* 29 N.Y.3d 1088, 64 N.Y.S.3d 178, 86 N.E.3d 265 [2017]).

***1122** Contrary to defendant's contention in his main brief, we conclude that the court's instructions to the jury with respect to counts 9 and 19, each charging criminal sale of a firearm in the third degree under Penal Law § 265.11(1), did not alter the theory of the prosecution with respect to those counts (*see People v. Rivera*, 133 A.D.3d 1255, 1256, 18 N.Y.S.3d 813 [4th Dept. 2015], *lv denied* 27 N.Y.3d 1154, 39 N.Y.S.3d 388, 62 N.E.3d 128 [2016]).

The evidence at trial is legally sufficient to establish the predicate conviction supporting the conviction of five counts of criminal possession of a weapon in the third degree (Penal Law § 265.02 [1]; *see generally Bleakley*, 69 N.Y.2d at 495, 515 N.Y.S.2d 761, 508 N.E.2d 672). Thus, defendant's challenge in his main brief to those charges based upon the presentation of erroneous information to the grand jury concerning the predicate conviction is not reviewable on appeal (*see* CPL 210.30 [6]; ***304** *People v. Highsmith*, 124 A.D.3d 1363, 1365, 1 N.Y.S.3d 674 [4th Dept. 2015], *lv denied* 25 N.Y.3d 1202, 16 N.Y.S.3d 524, 37 N.E.3d 1167 [2015]). The presentation of such erroneous information, moreover, was "not of such magnitude" as to have impaired the integrity of the grand jury and rendered its proceedings defective (*People v. Carey*, 241 A.D.2d 748, 751, 660 N.Y.S.2d 886 [3d Dept. 1997], *lv denied* 90 N.Y.2d 1010, 666 N.Y.S.2d 105, 688 N.E.2d 1388 [1997]; *see People v. Sheltray*, 244 A.D.2d 854, 855, 665 N.Y.S.2d 224 [4th Dept. 1997], *lv. denied* 91 N.Y.2d 897, 669 N.Y.S.2d 12, 691 N.E.2d 1038 [1998]).

Defendant failed to preserve for our review his challenge in his main brief to all but one of several allegedly improper comments made by the prosecutor during summation (*see* CPL 470.05[2]). In any event, we conclude that "[a]ny improprieties were not so pervasive or egregious as to deprive defendant of a fair trial" (*People v. Cox*, 21 A.D.3d 1361, 1364, 802 N.Y.S.2d 813 [4th Dept. 2005], *lv denied* 6 N.Y.3d 753, 810 N.Y.S.2d 421, 843 N.E.2d 1161 [2005] [internal quotation marks omitted]).

Contrary to the final contention in defendant's main brief in appeal No. 1, the sentence is not unduly harsh or severe.

Contrary to the contentions in defendant's main and pro se supplemental briefs in both appeal Nos. 1 and 2, we conclude that defendant was provided meaningful representation at trial (*see People v. Baldi*, 54 N.Y.2d 137, 147, 444 N.Y.S.2d 893, 429 N.E.2d 400 [1981]). Defendant failed to meet his burden of demonstrating the absence of a strategic or other legitimate explanation for defense counsel's alleged shortcomings (*see People v. Benevento*, 91 N.Y.2d 708, 712, 674 N.Y.S.2d 629, 697 N.E.2d 584 [1998]; *People v. Reed*, 151 A.D.3d 1821, 1822, 57 N.Y.S.3d 311 [4th Dept. 2017], *lv denied* 30 N.Y.3d 952, 67 N.Y.S.3d 136, 89 N.E.3d 526 [2017]), including those that were alleged in defendant's CPL article 440 motion.

Addressing the remaining contentions in defendant's pro se supplemental brief in appeal No. 1, we conclude that the record does not support his contention that the court improperly ***1123** deprived him of counsel of his choice when it relieved his first assigned attorney (*cf. People v. Griffin*, 92 A.D.3d 1, 5–7, 934 N.Y.S.2d 393 [1st Dept. 2011], *affd* 20 N.Y.3d 626, 964 N.Y.S.2d 505, 987 N.E.2d 282 [2013]; *see generally People v. Childs*, 247 A.D.2d 319, 325, 670 N.Y.S.2d 4 [1st Dept. 1998], *lv denied* 92 N.Y.2d 849, 677 N.Y.S.2d 79, 699 N.E.2d 439 [1998]). Nor does the record support defendant's contention that he was deprived of a fair trial as the result of the court's alleged bias against him (*cf. People v. Reynolds*, 90 A.D.3d 956, 957, 935 N.Y.S.2d 97 [2d Dept. 2011]). We have examined

defendant's remaining contention in his pro se supplemental brief and conclude that it is without merit.

3 4 In appeal No. 2, defendant contends in his main brief that his right to a public trial was violated when his family members and friends were excluded or removed from the courtroom. At the outset, we note that, while the right to a public trial is fundamental (*see People v. Martin*, 16 N.Y.3d 607, 611, 925 N.Y.S.2d 400, 949 N.E.2d 491 [2011]), a claim that such right was violated requires preservation (*see People v. Alvarez*, 20 N.Y.3d 75, 81, 955 N.Y.S.2d 846, 979 N.E.2d 1173 [2012], *cert denied* 569 U.S. 947, 133 S.Ct. 2004, 185 L.Ed.2d 867 [2013]). Here, none of the alleged violations of defendant's right to a public trial was brought to the court's attention at a time when the court could have taken remedial action, and thus defendant's contention is not preserved for our review (*see id.*). We decline to exercise our power to review that contention ***305** as a matter of discretion in the interest of justice (*see* CPL 470.15[6][a]).

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

All Citations

158 A.D.3d 1119, 70 N.Y.S.3d 301, 2018 N.Y. Slip Op. 00714

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People v. Everson
Supreme Court, Appellate Division, Fourth Department, New York. | February 2, 2018 | 158 A.D.3d 1123 | 67 N.Y.S.3d 877 (Mem) | 2018

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158 A.D.3d 1123
Supreme Court,
Appellate Division, Fourth Department, New York.

The PEOPLE of the State of New York, Respondent,

v.

Shawndell **EVERSON**, Defendant–Appellant. (Appeal No. 2.)

1206
KA 15–01899
Entered: February 2, 2018

Attorneys and Law Firms

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WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (VICTORIA M. WHITE OF COUNSEL), FOR RESPONDENT.

PRESENT: SMITH, J.P., CARNI, CURRAN, AND WINSLOW, JJ.

MEMORANDUM AND ORDER

Appeal, by permission of a Justice of the Appellate Division of the Supreme Court in the Fourth Judicial Department, from an order of the Onondaga County Court (Thomas J. Miller, J.), dated September 28, 2015. The order denied the motion of defendant to vacate a judgment of conviction pursuant to CPL 440.10.

Same memorandum as in *People v.* ***Everson***, [appeal No. 1] 158 A.D.3d 1123, 67 N.Y.S.3d 877 [Feb. 2, 2018] (4th Dept. 2018).

It is hereby ORDERED that the order so appealed from is unanimously affirmed.

All Citations

158 A.D.3d 1123, 67 N.Y.S.3d 877 (Mem), 2018 N.Y. Slip Op. 00715

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APPENDIX D

Supreme Court of the State of New York, Appellate Division, Fourth Department's Order denying reargument.

People v. Everson, 160 AD3d 1506.

People v. Everson
Supreme Court, Appellate Division, Fourth Department, New York. | April 30, 2018 | 160 A.D.3d 1506 | 72 N.Y.S.3d 852 (Mem) | 2018 N.Y. Slip (

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160 A.D.3d 1506
Supreme Court,
Appellate Division, Fourth Department, New York.

The PEOPLE of the State of New York, Respondent,

v.

Shawndell **EVERSON**, Defendant–Appellant. (Appeal No. 2.)

MOTION NO. (1206/17)
KA 15–01899
(Filed Apr. 30, 2018.)

PRESENT: WHALEN, P.J., SMITH, CARNI, CURRAN, AND WINSLOW, JJ.

Opinion

*1506 Motion for reargument denied.

All Citations

160 A.D.3d 1506, 72 N.Y.S.3d 852 (Mem), 2018 N.Y. Slip Op. 03078

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APPENDIX E

Constitutional provisions and statutes involved

APPENDIX E

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APPENDIX D

CONSTITUTIONAL PROVISIONS - STATUTES INVOLVED

United States Constitutional Amendment 6 provides in pertinent part:

> "In all criminal prosecutions the accused shall enjoy the right[***] to be confronted with the witnesses against him;..."

United States Constitutional Amendment 14 provides in pertinent part:

> Section 1. All persons born or naturalized in the United Sates and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. 1257 State Court; certiorari

(a) Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn into question or where the validity of a statute of any state is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution of the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purpose of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.