

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

91

KA 19-00961

PRESENT: WHALEN, P.J., LINDLEY, BANNISTER, OGDEN, AND GREENWOOD, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JAMOL M. JACKSON, DEFENDANT-APPELLANT.

ANDREW G. MORABITO, EAST ROCHESTER, FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (MERIDETH H. SMITH OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Judith A. Sinclair, J.), rendered May 14, 2018. The judgment convicted defendant, upon a jury verdict, of murder in the second degree, manslaughter in the first degree, robbery in the first degree, robbery in the second degree and criminal possession of a weapon in the second degree (two counts).

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

Memorandum: Defendant was convicted, upon a jury verdict, of murder in the second degree (Penal Law § 125.25 [3]), manslaughter in the first degree (§ 125.20 [1]), robbery in the first degree (§ 160.15 [4]), robbery in the second degree (§ 160.10 [1]), and two counts of criminal possession of a weapon in the second degree (§ 265.03 [1] [b]; [3]). Contrary to defendant's contention, Supreme Court properly denied his repeated severance motions, inasmuch as defendant failed to demonstrate the requisite good cause for a discretionary severance (see CPL 200.40 [1]; *People v Mahboubian*, 74 NY2d 174, 183 [1989]; cf. *People v McGuire*, 148 AD3d 1578, 1579 [4th Dept 2017]). Where counts are properly joined pursuant to CPL 200.40 (1), a defendant may nevertheless seek severance for " 'good cause shown' " (*Mahboubian*, 74 NY2d at 183). "Good cause . . . includes, but is not limited to, a finding that a defendant 'will be unduly prejudiced by a joint trial' " (*id.*, quoting CPL 200.40 [1]). "Upon such a finding of prejudice, the court may order counts to be tried separately, grant a severance of defendants or provide whatever other relief justice requires" (CPL 200.40 [1]). Where, as here, "the same evidence is used to prove the charges against each defendant, a joint trial is preferred and severance will . . . be granted [only] for the most cogent reasons" (*People v Dickson*, 21 AD3d 646, 647 [3d Dept 2005]; see CPL 200.40 [1]; *People v Bornholdt*, 33 NY2d 75, 87 [1973], cert denied 416 US 905 [1974]). We conclude that the court did not abuse

its discretion in denying defendant's motions inasmuch as " `there was no irreconcilable conflict between the defenses presented nor was there a significant danger that any alleged conflict led the jury to infer any defendant's guilt . . . [, and] no defendant took an aggressive adversarial stance against another' " (*People v Isaac*, 195 AD3d 1410, 1411 [4th Dept 2021], *lv denied* 37 NY3d 992 [2021]; see *People v De Los Angeles*, 270 AD2d 196, 197-198 [1st Dept 2000], *lv denied* 95 NY2d 889 [2000]).