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SJC-12061

COMMONWEALTH vs. BRYAN M. GRASSIE.

May 17, 2019.

Homicide. Practice, Criminal, Verdict.

After a jury convicted the defendant, Bryan M. Grassie, of murder in the second degree, he filed a motion pursuant to Mass. R. Crim. P. 25 (b) (2), as amended, 420 Mass. 1502 (1995), to reduce the verdict to manslaughter.¹ The trial judge denied the motion. In the defendant's direct appeal, which we transferred to this court on our own initiative, we addressed most of the issues in the case but left open the defendant's claim that the trial judge erred or abused his discretion in denying the rule 25 motion.² See Commonwealth v. Grassie, 476 Mass. 202 (2017) (Grassie I). We then transferred the case to the county court in order for the trial judge, who is now a Justice of this court, to review the motion and provide a statement explaining the reasons for his decision. See id. at 216-217. He did so, and then reported the matter back to the full court along with a memorandum of decision. Because in his memorandum he referred to two different standards of review (one proper and one improper), we remanded the matter back to him, again sitting as

¹ The jury also convicted the defendant of assault and battery by means of a dangerous weapon.

² We rejected the defendant's claims that the evidence was insufficient to support the conviction of murder in the second degree; that the prosecutor's closing argument was improper and warranted a new trial; and that the indictment should be dismissed on the basis that the grand jury were not given legal instructions on mitigating circumstances and self-defense. See Commonwealth v. Grassie, 476 Mass. 202, 203 (2017).

a single justice, for reconsideration. In his amended decision, by which we are assured that he has applied the proper standard, he concluded that the case "is not one of the extraordinary cases where the interests of justice require the trial judge to disturb a verdict supported by the evidence," and that decision is now before us.

The single issue left for us to decide is whether the trial judge erred or abused his discretion in reaching this conclusion -- that is, in denying the defendant's motion to reduce the verdict from murder in the second degree to manslaughter. As we stated in Grassie I, 476 Mass. at 214, "[a]buse of discretion arises where the judge made a clear error of judgment in weighing the factors relevant to the decision . . . such that the decision falls outside the range of reasonable alternatives" (quotations and citation omitted).

Rule 25 (b) (2) authorizes a trial judge to reduce a verdict "even if the evidence warrants the jury's verdict" to help "ensure that the result in every criminal case is consonant with justice." Commonwealth v. Woodward, 427 Mass. 659, 666 (1998). In assessing a motion pursuant to the rule, a judge must consider all the evidence. See, e.g., Commonwealth v. Sokphann Chhim, 447 Mass. 370, 382-383 (2006). Now that we have the trial judge's amended decision before us, there is no question that he has done this, and that in reaching his decision to deny the defendant's motion to reduce the verdict, he took into account all the trial evidence, including evidence of mitigation. The evidence at trial, as detailed in Grassie I, 476 Mass. at 208-209, included that the defendant was the initial aggressor and that he invited the altercation that led to the fatal stabbing. Evidence of mitigation included the defendant's age (a few months past his eighteenth birthday), that the defendant was outnumbered, and that he was intoxicated. Id. at 212. The case, in short, is a close one, but the trial judge, having seen and heard all the evidence directly, is in the best position to assess it.³ Our role here is "not to decide whether we would have acted as the trial judge did," id. at 214, quoting Sokphann Chhim, supra at 381, but only, as we have

³ The defendant takes particular issue with what he sees as the trial judge's failure to "fully appreciate" how the defendant's age at the time of the incident had an impact on the defendant's behavior. We think it clear that the judge did take this into account, specifically noting as evidence of mitigation the fact that the defendant and the victims were all "young adults" attending a high school graduation party.

noted, to determine whether he abused his discretion or committed an error of law.

The power to reduce a verdict pursuant to rule 25 should be exercised only sparingly. See Sokphann Chhim, 447 Mass. at 381. The trial judge did not err or abuse his discretion in deciding not to reduce the verdict here.

We therefore affirm the defendant's convictions for the reasons stated in Grassie I. And for the reasons stated herein, we affirm the denial of the defendant's motion to reduce the verdict from murder in the second degree to manslaughter.

So ordered.

Kenneth H. Anderson for the defendant.

Laurie Yeshulas, Assistant District Attorney, for the Commonwealth.

Maura Healey, Attorney General, & Argie K. Shapiro, Assistant Attorney General, for Attorney General, amicus curiae, submitted a brief.