State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: February 29, 2024 111647

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,
v MEMORANDUM AND ORDER

MALIEK LEWIS,
Appellant.

Calendar Date: January 16, 2024

Before: Garry, P.J., Egan Jr., Aarons, Reynolds Fitzgerald and McShan, JJ.

Dennis J. Lamb, Troy, for appellant, and appellant pro se.

P. David Soares, District Attorney, Albany *(Erin N. LaValley* of counsel), for respondent.

Reynolds Fitzgerald, J.

Appeal from a judgment of the Supreme Court (Roger D. McDonough, J.), rendered March 29, 2019 in Albany County, upon a verdict convicting defendant of the crimes of attempted murder in the first degree, attempted murder in the second degree, attempted assault in the first degree, robbery in the first degree, burglary in the first degree and criminal possession of a weapon in the second degree.

Defendant and codefendant Edward Harris were charged by a 10-count indictment stemming from an incident in March 2018 when they entered the victim's motel room, robbed him at gunpoint and shot him in the leg. The victim later identified defendant as the shooter in a photo array. Defendant filed an omnibus motion seeking, as relevant

here, to suppress all evidence for lack of probable cause to arrest him, to suppress all physical evidence illegally seized by warrant, to suppress the photo array identification of him and to dismiss the indictment arguing that the grand jury proceeding was impaired. Supreme Court denied the motion to dismiss the indictment and scheduled a *Dunaway/Mapp/Wade* hearing as to defendant's request to suppress evidence. Following the hearing, Supreme Court determined that the photo array procedure was proper and not unduly suggestive but did suppress defendant's seized clothing. Upon finding the photo array procedure proper, the court found probable cause for defendant's arrest.

Prior to trial and subsequent to the codefendant pleading guilty, the People, upon consent, withdrew four charges and renumbered the indictment, charging defendant with attempted murder in the first degree, attempted murder in the second degree, attempted assault in the first degree, robbery in the first degree, burglary in the first degree and criminal possession of a weapon in the second degree. Following a jury trial, defendant was convicted of all charges. Subsequently, defendant unsuccessfully moved to set aside the verdict and was thereafter sentenced, as a second violent felony offender, to 20 years to life in prison for the conviction of attempted murder in the first degree, a concurrent prison term of 20 years, followed by five years of postrelease supervision, for his conviction of attempted murder in the second degree and to lesser concurrent sentences on the remaining convictions.[1] Defendant appeals.

Defendant challenges the verdict as unsupported by legally sufficient evidence and against the weight of the evidence. "When assessing the legal sufficiency of a jury verdict, we view the facts in the light most favorable to the People and examine whether there is a valid line of reasoning and permissible inferences from which a rational jury could have found the elements of the crime[s] proved beyond a reasonable doubt" (*People v Bridges*, 220 AD3d 1107, 1108 [3d Dept 2023] [internal quotation marks and citations omitted], *lv denied* ___ NY3d ___ [Jan. 31, 2024]; *see People v Peasley*, 208 AD3d 1466, 1467 [3d Dept 2022], *lv denied* 39 NY3d 1074 [2023]). "In contrast, when undertaking a weight of the evidence review, this Court must first determine whether, based on all the credible evidence, a different finding would not have been unreasonable and then, if not, weigh the relative probative force of conflicting testimony and the relative strength of conflicting inferences that may be drawn from the testimony to determine if the verdict is supported by the weight of the evidence" (*People v Rivera*, 212

[1] We note that, inconsistent with the sentence imposed by Supreme Court, the uniform sentence and commitment form states that the prison sentence for attempted murder in the second degree was 15 years. We remit for correction of that form.

AD3d 942, 944 [3d Dept 2023] [internal quotation marks and citations omitted], *lv denied* 39 NY3d 1113 [2023]; *see People v Leppanen*, 218 AD3d 995, 996 [3d Dept 2023], *lv denied* 40 NY3d 1081 [2023]).

As relevant here, "[a] person is guilty of an attempt to commit a crime when, with intent to commit a crime, he [or she] engages in conduct which tends to effect the commission of such crime" (Penal Law § 110.00). A person is guilty of attempted murder in the first degree when he or she, with the intent to cause the death of another person, attempts to cause the death of such person while in the course of committing or attempting to commit and in furtherance of robbery or burglary in the first or second degree (*see* Penal Law § 125.27 [1] [a] [vii]). A person is guilty of attempted murder in the second degree when he or she attempts to cause the death of a person after having acted with intent to cause that person's death (*see* Penal Law § 125.25 [1]). A person is guilty of attempted assault in the first degree when, with intent to cause serious physical injury to another person, he or she attempts to cause such injury to such person by means of a deadly weapon or a dangerous instrument (*see* Penal Law § 120.10 [1]). A serious physical injury includes a "physical injury which creates a substantial risk of death" (Penal Law § 10.00 [10]), and a dangerous instrument includes "any instrument, . . . which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or other serious physical injury" (Penal Law § 10.00 [13]).

"A person is guilty of robbery in the first degree when he [or she] forcibly steals property and when, in the course of the commission of the crime or of immediate flight therefrom, he [or she] or another participant in the crime . . . [i]s armed with a deadly weapon" (Penal Law § 160.15 [2]). "A person is guilty of burglary in the first degree when he [or she] knowingly enters or remains unlawfully in a dwelling with intent to commit a crime therein, and when, in effecting entry or while in the dwelling or in immediate flight therefrom, he [or she] or another participant in the crime . . . [i]s armed with . . . a deadly weapon" (Penal Law § 140.30 [1]). Lastly, criminal possession of a weapon in the second degree occurs when an individual possesses a loaded firearm outside of their home or place of business (*see* Penal Law § 265.03 [3]).

At trial, the victim testified that he was staying at a Motel 6 in the City of Albany. On March 25, 2018, the victim left his room to walk to a convenience store and, as he exited the motel, he saw defendant and the codefendant in the hallway. The victim returned to his room, and approximately 30 minutes later there was a knock on his door by a person claiming to be a Motel 6 employee. When the victim opened the door, the codefendant entered and pushed him back into the room. He was followed by defendant,

who pulled out a black 9 millimeter semi-automatic gun. After the codefendant directed the victim to hand over everything, including his wallet, he began to encourage defendant to shoot the victim, at which point the victim surrendered his wallet to the codefendant. As the codefendant turned away to hand the wallet to defendant, the victim grabbed him and began to cut and stab him with his pocketknife. Defendant then fired the gun at the victim but missed. Defendant proceeded to pistol whip the victim on his head, before placing the gun against the victim's forehead and pulling the trigger. Fortunately for the victim, the gun jammed. The victim stated that he then began wrestling with defendant and as defendant was backing out of the room, defendant fired the gun at him again. This time it worked, but as defendant was firing the gun, the victim was able to slap at it, causing the bullet to go through his leg. Defendant then fled the room and the victim recommenced fighting with the codefendant. The fight spilled out into the hallway, where he was able to put a chokehold on the codefendant until the police arrived.

As part of the codefendant's guilty plea, he entered into a cooperation agreement with the People to testify at trial. At trial, he testified that on March 25, 2018, when he awoke in his room at the Motel 6 at approximately 9:00 p.m., after a two-day cocaine bender, he craved more cocaine. Eventually, he left the motel to purchase cigarettes from the nearby convenience store. As he was leaving, he ran into defendant, who told him that he was going to steal money from a person at the motel. They proceeded to the store together, and on the way back to the motel he pressured defendant to let him "see if the guy had drugs." He stated that when they got back to the motel, he glimpsed a black gun in defendant's possession. The codefendant testified that he then went to the victim's door, knocked on it, purchased crack from him and left the room. Thereafter, he saw defendant enter the room, and he heard gunshots. Shortly thereafter, as he walked past the victim's room, the victim grabbed him and they started fighting until the police arrived. Lastly, the codefendant testified that after he was arrested and was in the Albany County Jail, he ran into defendant and asked him why he shot the victim and defendant stated, "he tried to grab the gun from [me]."

A tenant of the motel testified that on the date of the incident he was living in the room next to the victim's and he heard "a bunch of fighting going on next door." He then heard a gunshot and saw a flash as the bullet penetrated his wall. He heard another shot, more fighting in the hallway and the room, another shot and then someone yelled "call the police."

Several officers with the Albany Police Department (hereinafter APD) testified that they were dispatched to the Motel 6 in response to a call of "shots fired." When they arrived, there were two men fighting in the hallway. An APD sergeant testified that he

was dispatched to the Motel 6 on the date of the incident and, after entering the victim's room, he found an unfired shell and a bullet hole in the wall and ceiling. A forensic detective with the APD Forensic Investigation Unit testified that he photographed the scene from the entrance of the building to the victim's room. In the victim's room, he photographed the bullet hole in the wall, a live round of ammunition, an empty shell casing with a blood spot, the victim's clothing and what appeared to be blood on the bed sheets. He collected the live round of ammunition, the spent casing, a pocketknife and other items found in the victim's and the codefendant's pockets. He also collected swabs of what appeared to be blood from the motel room floor, the hallway wall and the victim's pocketknife. Lastly, he testified that he took photographs of the victim while he was being treated at the Albany Medical Center. All the photographs were published for the jury. An officer with the APD testified that after canvassing the motel, no gun was found, nor were any eyewitnesses located. A camera management video coordinator with the APD testified that he saved information recorded on the Motel 6 surveillance cameras showing both defendant and the codefendant at the motel premises on the night of the incident. The video was shown to the jury. A detective with APD testified that he assisted in the arrest of defendant and at the time of his arrest he saw several $100 bills.

An Albany Medical Center trauma surgeon, who treated the victim that night, testified that the victim had a gunshot wound to his left lower extremity, several lacerations above his eyebrow and several abrasions to various parts of his body. The doctor confirmed that being shot anywhere in the body is potentially life threatening, thus a level 1 trauma – the highest level, designated by the severity of the injury – was activated. However, the victim's gunshot wound had self-cauterized; therefore, the wound was washed out, bandaged and was not life threatening. The doctor opined that lacerations, like the ones on the victim's head, are caused by an object with sharp corners. Although the victim's drug test screen showed a blood alcohol level of .213, the doctor did not feel the victim was in an acute intoxicated state as he was not slurring his words, did not have an overwhelming alcohol smell and was cooperative.

We find that there is legally sufficient evidence supporting defendant's convictions for attempted murder in the first degree and attempted murder in the second degree. Defendant argues that the evidence did not justify these charges and, instead, the evidence shows there was a struggle for the gun and the victim was shot. "The intent to kill may be inferred from the surrounding circumstances and a defendant's actions. Criminal intent may be inferred from the totality of the circumstances or from the natural and probable consequences of the defendant's conduct" (*People v Terry*, 196 AD3d 840, 842 [3d Dept 2021] [internal quotation marks and citations omitted], *lv denied* 37 NY3d 1030 [2021]). Contrary to defendant's assertion, the victim testified that defendant fired a

shot at him while he was fighting with the codefendant, that defendant placed the gun against his forehead and pulled the trigger and pointed the gun at him and fired a shot that, but for the victim simultaneously striking the gun while it was being fired, caused the bullet to strike him in the leg. The physical evidence and testimony of other witnesses supported the victim's testimony. Accepting the testimony and other supporting evidence, and, when viewing it in a light most favorable to the People, the evidence was legally sufficient to establish that defendant had the requisite intent to kill the victim and engaged in conduct that "c[a]me dangerously near commission of the completed crime," and would have completed the crime "but for timely interference" (*People v Lendof-Gonzalez*, 36 NY3d 87, 93 [2020] [internal quotation marks and citations omitted]; *see People v Perkins*, 203 AD3d 1337, 1339 [3d Dept 2022], *lv denied* 38 NY3d 1035 [2022]).

As to the conviction for attempted assault in the first degree, defendant argues that the evidence was legally insufficient to show that defendant intended to cause serious physical injury to the victim and that no weapon was found. The trauma surgeon explained that a level one trauma was activated when the victim arrived at the medical center because every gunshot wound is potentially life threatening. She further described that she immediately examined the victim's femoral artery, vein and nerve, as a person can bleed to death from a femoral artery injury. "Where the defendant is charged with an attempt crime, he or she need not succeed in causing a serious physical injury; rather, all that is required is that the defendant intended such injury and engaged in conduct directed at accomplishing that objective" (*People v Pine*, 126 AD3d 1112, 1114 [3d Dept 2015] [internal quotation marks and citations omitted], *lv denied* 27 NY3d 1004 [2016]). "Although no weapon was recovered . . . , we do not distinguish between direct or circumstantial evidence in conducting a legal sufficiency and/or weight of the evidence review" (*People v Gilmore*, 200 AD3d 1184, 1188 [3d Dept 2021] [internal quotation marks and citations omitted], *lv denied* 38 NY3d 927 [2022]; *see People v Pine*, 126 AD3d at 1115). Accordingly, we discern no basis upon which to disturb the verdict convicting defendant of attempted assault in the first degree.

As to the convictions for robbery in the first degree, burglary in the first degree and criminal possession of a weapon in the second degree, when viewed in a light most favorable to the People, the foregoing evidence provided a valid line of reasoning and permissible inferences from which a rational jury could conclude that defendant and the codefendant planned to rob the victim, used deception to enter the victim's motel room for the purpose of committing the robbery and threatened the victim with a deadly weapon – a gun – to facilitate the robbery. Thus, the evidence is legally sufficient to support said convictions (*see People v Henry*, 173 AD3d 1470, 1477-1478 [3d Dept

2019], *lv denied* 34 NY3d 932 [2019]; *People v Bost*, 139 AD3d 1317, 1320 [3d Dept 2016]).

We disagree with defendant's contention that the verdict is against the weight of the evidence because it was predicated on the testimony of the victim and the codefendant, whose testimony he avers is incredible. Although a different verdict would not have been unreasonable, when according deference to the jury's credibility assessments and viewing the evidence in a neutral light, we find that the verdict is supported by the weight of the evidence. The fact that the victim was under the influence of alcohol does not render his testimony incredible as a matter of law. Both the victim and the surgeon were cross-examined on this issue and the jury was free to make its own credibility determination as to what happened (*see People v Gonzalez*, 64 AD3d 1038, 1041 [3d Dept 2009], *lv denied* 13 NY3d 796 [2009]. Although there were some inconsistencies between the codefendant's and the victim's testimony, the fact that the codefendant's "testimony was given in connection with [a] cooperation agreement[ ] with the People, and that such witness[ ] received some benefit as a result thereof, does not render [his] testimony incredible as a matter of law" (*People v Thompson*, 75 AD3d 760, 763 [3d Dept 2010], *lv denied* 15 NY3d 896 [2010]).

Defendant next contends that the grand jury proceeding was impaired, thereby requiring dismissal of the indictment. Defendant premises this claim upon the People's reliance on hearsay testimony without providing a curative instruction (*see* CPL 210.35 [5]). "[T]he dismissal of an indictment under CPL 210.35 (5) is an exceptional remedy and should be ordered only where there is prosecutorial wrongdoing, fraudulent conduct or errors that potentially prejudice the ultimate decision reached by the grand jury" (*People v Sammeth*, 190 AD3d 1112, 1116 [3d Dept 2021] [internal quotation marks, brackets and citations omitted], *lv denied* 36 NY3d 1123 [2021]). Here, defendant's argument for dismissing the indictment is based on a single hearsay statement elicited from defendant's sister during her testimony to the grand jury. In view of the sufficiency of the admissible proof, including the victim's testimony, which supports the indictment, we do not find that this single hearsay statement, which did not pertain to the elements of the charged offenses, requires dismissal of the indictment (*see People v Sammeth*, 190 AD3d at 1116; *People v Moffitt*, 20 AD3d 687, 689-690 [3d Dept 2005], *lv denied* 5 NY3d 854 [2005]). Furthermore, there is no evidence that the prosecutor acted fraudulently or in bad faith or that this statement prejudiced defendant. Accordingly, we agree with Supreme Court that the integrity of the proceeding was not impaired (*see People v Sammeth*, 190 AD3d at 1116; *People v Watson*, 183 AD3d 1191, 1193-1194 [3d Dept 2020], *lv denied* 35 NY3d 1049 [2020].

We reject defendant's contention that Supreme Court erred in denying his motion to suppress the photo array because the procedure was unduly suggestive. "A photo array is unduly suggestive if some feature or characteristic of one of the depicted individuals or photographs is so unique or distinctive that it draws the viewer's attention to that photograph, thereby indicating that the police have selected that particular individual. While the individuals depicted in a photo array do not need to be nearly identical to the defendant, their characteristics must be sufficiently similar to those of the defendant, so as to not create a substantial likelihood that the defendant would be singled out for identification" (*People v Dowling*, 207 AD3d 799, 799-800 [3d Dept 2022] [internal quotation marks and citations omitted], *lv denied* 39 NY3d 939 [2022]; *see People v Shabazz*, 211 AD3d 1093, 1099 [3d Dept 2022], *lv denied* 39 NY3d 1113 [2023]). "The People must initially establish that the police conduct was reasonable and that the photo array lacks any undue suggestiveness, but the defendant bears the ultimate burden of proving that the pretrial identification procedure was unduly suggestive" (*People v Serrano*, 173 AD3d 1484, 1486 [3d Dept 2019] [internal quotation marks, ellipsis and citations omitted], *lv denied* 34 NY3d 937 [2019]; *see People v Johnson*, 176 AD3d 1392, 1394 [3d Dept 2019], *lv denied* 34 NY3d 1129 [2020]).

At the *Dunaway/Mapp/Wade* hearing, a detective with the APD's criminal investigation unit testified that when he was promoted to detective, he shadowed a veteran detective for two or three weeks, and a key point of the training was the creation of and administering photo arrays. The detective averred that he created the photo array by utilizing a computer software program and typing defendant's name into the database.[2] The software selected individuals with similar characteristics, shuffled the pictures and created the arrangement. The detective further testified that he took the single page photo array to the victim at the hospital, placed it face down on his bed, read the APD's standard photo array form to the victim and advised the victim that when he was ready he could flip the page over. The victim recognized defendant and pointed to his picture. The detective testified that the other detective who accompanied him did not interject or participate in the procedure, except to write on the photo array what the victim said when he had identified defendant and then that detective signed the array.

Although the detective was the same individual who prepared and conducted the identification process,[3] the procedure was not unduly suggestive as the detective was not

[2] Defendant was previously identified by another APD detective familiar with him, after the detective viewed the Motel 6 video footage of the incident.

[3] This was correctly pointed out in defendant's pro se supplemental brief.

familiar with defendant, nor had he met or received any information from the victim prior to the identification process. In view of the foregoing, we find that the People "satisfied their burden of demonstrating that the police conduct was reasonable and the lack of undue suggestiveness in the pretrial identification procedure" (*People v Hawkins*, 167 AD3d 1071, 1072 [3d Dept 2018]; *see People v Marryshow*, 162 AD3d 1313, 1315 [3d Dept 2018]). Our review of the photo array confirms Supreme Court's findings, to which we accord great deference. The photo array contains six photographs of men who all appear to be of the same general age, with similar skin tones, facial hair and hair. Accordingly, we are satisfied that the photo array was not unduly suggestive, as the individuals' characteristics are sufficiently similar and did not create a likelihood that defendant would be singled out (*see People v Dowling*, 207 AD3d at 800; *People v Linear*, 200 AD3d 1498, 1501 [3d Dept 2021], *lv denied* 38 NY3d 951 [2022]).

Furthermore, we find that Supreme Court properly concluded, based on the testimony received at the *Dunaway/Mapp/Wade* hearing, that probable cause existed for defendant's arrest for the charges, based on the victim's positive identification of defendant from the photo array conducted prior to his arrest (*see People v Matthews*, 159 AD3d 1111, 1112-1113 [3d Dept 2018]; *People v Williams*, 89 AD3d 1222, 1224 [3d Dept 2011], *lv denied* 18 NY3d 887 [2012]; *People v Rolle*, 72 AD3d 1393, 1395 [3d Dept 2010], *lv denied* 16 NY3d 745 [2011]).

Defendant argues that Supreme Court violated his right to a fair trial when, as part of its pretrial *Molineux* ruling, it improperly permitted the People to present testimony of defendant's uncharged crimes, as such evidence only served to demonstrate his propensity to engage in criminal activity. "It is well settled that the *Molineux* rule requires that evidence of a defendant's prior bad acts or crimes be excluded unless it is probative of a material issue other than criminal propensity and its probative value outweighs the risk of prejudice to the defendant. However, such evidence may be admitted if it falls within the recognized *Molineux* exceptions – motive, intent, absence of mistake, common plan or scheme and identity – or where such proof is inextricably interwoven with the charged crimes, provides necessary background or completes a witness's narrative" (*People v Perulli*, 217 AD3d 1133, 1136 [3d Dept 2023] [internal quotation marks, brackets and citations omitted], *lv denied* 40 NY3d 1081 [2023]; *see People v Restifo*, 220 AD3d 1113, 1118 [3d Dept 2023], *lv denied* ___ NY3d ___ [Jan. 12, 2024]). Supreme Court properly concluded that the testimony provided necessary background, appropriate context, established the relationship between defendant and the codefendant and completed the witness's narrative. Further, Supreme Court provided limiting instructions after a majority of the witnesses' testimony, along with a thorough limiting instruction during its final instructions to the jury. The instructions properly emphasized

the limited purposes for which the jury could consider such evidence, which adequately minimized any resulting prejudice. We perceive no abuse of discretion or error in admitting such evidence (*see People v Doane*, 212 AD3d 875, 881 [3d Dept 2023], *lv denied* 39 NY3d 1154 [2023]; *People v Smith*, 157 AD3d 978, 980 [3d Dept 2018], *lv denied* 31 NY3d 1087 [2018]).

Defendant also contends that Supreme Court's *Sandoval* ruling, permitting the People to impeach him with a remote criminal conviction if he chose to testify, was improper. As defendant failed to object to this ruling prior to the close of the hearing, it is unpreserved for our review (*see People v McMillan*, 220 AD3d 1119, 1121 [3d Dept 2023], *lv denied* 40 NY3d 1081 [2023]; *People v Lafountain*, 200 AD3d 1211, 1217 [3d Dept 2021], *lv denied* 38 NY3d 951 [2022]).

Defendant asserts that he is entitled to a reconstruction hearing on the grounds that defense counsel objected on two occasions during the trial, however, due to numerous individuals speaking at the same time, the objections were omitted in the transcript. "Parties to an appeal are entitled to have that record show the facts as they really happened at trial, and should not be prejudiced by an error or omission of the stenographer, but not every dispute about the record mandates a reconstruction hearing. Reconstruction hearings may be appropriate where it is clear that a proceeding took place that was not transcribed; the trial court refused to record the proceedings; the minutes have been lost; or there is significant ambiguity in the record" (*People v Maisonette*, 192 AD3d 1325, 1326 [3d Dept 2021] [internal quotation marks and citations omitted], *lv denied* 37 NY3d 966 [2021]; *see People v Parris*, 4 NY3d 41, 48 [2004]. The record evinces that the transcript was read back several times, and there was no significant ambiguity shown in the record. As the proceeding was transcribed and the minutes were not lost, defendant has not established a sufficient basis for a reconstruction hearing (*see People v Velasquez*, 1 NY3d 44, 49 [2003]; *People v Maisonette*, 192 AD3d at 1327).

Defendant asserts that the prosecutor made prejudicial statements during opening and closing summations that deprived him of a fair trial. Specifically, the People referenced defendant "pimping girls" and "selling drugs" at the Motel 6. "Reversal based on prosecutorial misconduct during summation[s] is warranted only if the misconduct is such that the defendant suffered substantial prejudice, resulting in a denial of due process. That determination hinges upon the severity and frequency of the conduct, whether the trial court took appropriate action to dilute the effect of the conduct and whether, from a review of the evidence, it can be said that the result would have been the same absent such conduct" (*People v Gertz*, 204 AD3d 1166, 1171 [3d Dept 2022] [internal quotation marks and citations omitted], *lv denied* 38 NY3d 1070 [2022]; *see People v Nellis*, 217

AD3d 1056, 1059 [3d Dept 2023]). Our review of the record, as a whole, fails to disclose that the prosecutor engaged in a flagrant and pervasive pattern of prosecutorial misconduct so as to deprive defendant of a fair trial. Moreover, at the time the People made these statements Supreme Court acted quickly in issuing curative instructions and, as part of its final jury instructions, also issued a comprehensive curative instruction thereby ameliorating any prejudice to defendant (*see People v Hadlock*, 218 AD3d 925, 930-931 [3d Dept 2023], *lv denied* 40 NY3d 997 [2023]; *People v Rivera*, 206 AD3d 1356, 1360 [3d Dept 2022], *affd* 39 NY3d 1062 [2023], *cert denied* ___ US ___, 143 S Ct 2675 [2023]).

There is no merit to defendant's contention that the testimony of the codefendant was uncorroborated, should not have been admitted and that Supreme Court erred by including an accessorial liability charge to the jury. "[T]o be an accomplice for corroboration purposes, the witness must somehow be criminally implicated and potentially subject to prosecution for the conduct or factual transaction related to the crimes for which the defendant is on trial" (*People v Medeiros*, 116 AD3d 1096, 1098 [3d Dept 2014] [internal quotation marks and citation omitted], *lv denied* 24 NY3d 1045 [2014]; *see People v Whyte*, 144 AD3d 1393, 1394 [3d Dept 2016]). Here, the codefendant was charged with the same crimes, in the same indictment, under the same facts as defendant and pleaded guilty. Thus, the codefendant was an accomplice as a matter of law (*see People v Whyte*, 144 AD3d at 1395; *People v Medeiros*, 116 AD3d at 1098). We now turn to whether the codefendant's testimony was sufficiently corroborated. "Evidence is legally sufficient to corroborate accomplice testimony if it tends to connect the defendant to the crime, thereby assuring the jury that the accomplice has offered credible probative evidence" (*People v Furman*, 152 AD3d 870, 873 [3d Dept 2017] [internal quotation marks and citations omitted], *lv denied* 30 NY3d 1060 [2017]). "The corroborative evidence required need not be powerful in itself. It need not show the commission of the crime; it need not show that the defendant was connected with the commission of the crime. It is enough if it tends to connect the defendant with the commission of the crime in such a way as may reasonably satisfy the jury that the accomplice is telling the truth. . . . Notably, the People are not required to corroborate a defendant's identity, just as the corroborative evidence need not establish all the elements of the offense" (*People v Jones*, 215 AD3d 1123, 1128-1129 [3d Dept 2023] [internal quotation marks, ellipsis, brackets and citations omitted], *lv denied* 40 NY3d 935 [2023]; *see People v Williams*, 156 AD3d 1224, 1226 [3d Dept 2017], *lv denied* 31 NY3d 1018 [2018]). Here, there was ample corroborative evidence in the form of the victim's testimony, the adjoining motel room tenant's testimony, along with video footage, that conformed with the codefendant's testimony linking defendant to the commission of the crimes in such a way that the jury could be reasonably satisfied that the testimony given

by the codefendant was truthful (*see People v Jones*, 215 AD3d at 1129; *People v Williams*, 156 AD3d at 1228). As Supreme Court properly charged the jury that the codefendant was an accomplice as a matter of law, the court's charge with respect to accessorial liability was entirely proper (*see People v Duncan*, 46 NY2d 74, 80 [1978], *cert denied* 442 US 910 [1979]; *People v Usera*, 233 AD2d 270, 270 [1st Dept 1996], *lv denied* 89 NY2d 989 [1997]; *People v Kinsman*, 144 AD2d 772, 774 [3d Dept 1988], *lv denied* 73 NY2d 1017 [1989]).

Defendant's contention that he received ineffective assistance of counsel is not persuasive. "A claim of ineffective assistance of counsel must be supported with proof that the attorney failed to provide meaningful representation and that there were no strategic or other legitimate explanations for counsel's allegedly deficient conduct" (*People v Njoku*, 218 AD3d 1047, 1051 [3d Dept 2023] [internal quotation marks and citations omitted], *lv denied* ___ NY3d ___ [Jan. 24, 2024]). "In order to sustain a claim of ineffective assistance of counsel, a court must consider whether defense counsel's actions at trial constituted egregious and prejudicial error such that the defendant did not receive a fair trial. A claim will fail so long as the evidence, the law, and the circumstances of a particular case, viewed in totality and as of the time of the representation, reveal that the attorney provided meaningful representation" (*People v Campbell*, 196 AD3d 834, 838-839 [3d Dept 2021] [internal quotation marks, brackets and citations omitted], *lv denied* 37 NY3d 1025 [2021]). However, "trial counsel cannot be ineffective for failing to advance an argument that has little or no chance of success" (*People v Williams*, 35 NY3d 24, 45 [2020]; *see People v May*, 188 AD3d 1309, 1311 [3d Dept 2020], *lv denied* 36 NY3d 974 [2020]). Reviewing defense counsel's representation in its totality reveals that she made appropriate motions, was successful in suppressing evidence, effectively cross-examined witnesses, made cogent opening and closing statements and, accordingly, we are satisfied that defendant received meaningful representation (*see People v Wilkins*, 216 AD3d 1359, 1364-1365 [3d Dept 2023], *lv denied* 40 NY3d 1000 [2023]; *People v Bateman*, 212 AD3d 993, 997 [3d Dept 2023], *lv denied* 39 NY3d 1140 [2023]).

Finally, we reject defendant's assertion that his sentence was unduly harsh and excessive, considering his prior criminal history as well as the violent nature of the attack (*see People v Mercer*, 221 AD3d 1259, 1265 [3d Dept 2023]; *People v DeCamp*, 211 AD3d 1121, 1124 [3d Dept 2022], *lv denied* 39 NY3d 1077 [2023]). We decline defendant's invitation to invoke our interest of justice jurisdiction to reduce his sentence (*see* CPL 470.15 [6] [b]).

Garry, P.J., Egan Jr., Aarons and McShan, JJ., concur.

ORDERED that the judgment is affirmed, and matter remitted to the Supreme Court for the entry of an amended uniform sentence and commitment form.

ENTER:

Robert D. Mayberger
Clerk of the Court