

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

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KA 04-02006

PRESENT: HURLBUTT, J.P., CENTRA, PERADOTTO, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

STEVEN D. MAJOR, DEFENDANT-APPELLANT.

EOANNOU, LANA & D'AMICO, BUFFALO (JEREMY D. SCHWARTZ OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (RAYMOND C. HERMAN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (Ronald H. Tills, A.J.), rendered August 20, 2004. The judgment convicted defendant, upon a jury verdict, of murder in the second degree (three counts), robbery in the first degree, attempted robbery in the first degree and criminal possession of a weapon in the second degree.

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

Memorandum: Defendant appeals from a judgment convicting him upon a jury verdict of, inter alia, three counts of murder in the second degree (Penal Law § 125.25 [1], [3]) and one count of robbery in the first degree (§ 160.15 [2]). Contrary to the contention of defendant, Supreme Court properly refused to sever count seven of the indictment, charging defendant with criminal solicitation in the second degree (Penal Law § 100.10). That count was properly joined pursuant to CPL 200.20 (2) (b) because evidence that defendant sought assistance in finding and killing the murder victim, who was a witness to the other offenses charged, was material and admissible as evidence-in-chief in establishing defendant's consciousness of guilt with respect to those other offenses (see *People v Bongarzone*, 69 NY2d 892, 895). "[O]nce the offenses were properly joined, the court lacked the statutory authority to sever" (*People v Cornell*, 17 AD3d 1010, 1011, lv denied 5 NY3d 805; see *People v Lee*, 56 AD3d 1192, 1193, lv denied 11 NY3d 926). Defendant failed to preserve for our review his contention that the court erred in its instruction to the jury after dismissing count seven of the indictment (see CPL 470.05 [2]). In addition, he failed to object to the court's *Sandoval* ruling on the grounds now raised on appeal and thus failed to preserve his contention with respect to the court's *Sandoval* ruling for our review (see *id.*). We decline to exercise our power to review those contentions as a matter of discretion in the interest of justice (see

CPL 470.15 [6] [a]). Finally, viewing the evidence in light of the elements of the crimes as charged to the jury (*see People v Danielson*, 9 NY3d 342, 349), we conclude that the verdict is not against the weight of the evidence (*see generally People v Bleakley*, 69 NY2d 490, 495).

Entered: April 24, 2009

Patricia L. Morgan
Deputy Clerk of the Court