

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

1161

KA 08-00887

PRESENT: MARTOCHE, J.P., CENTRA, FAHEY, PERADOTTO, AND GREEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JEFFREY A. SCHLAU, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (KRISTIN M. PREVE OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (GARY M. ERTEL OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (John L. Michalski, A.J.), rendered July 23, 2007. The judgment convicted defendant, upon a jury verdict, of criminal possession of stolen property in the fourth degree and criminal possession of a controlled substance in the seventh 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 criminal possession of stolen property in the fourth degree (Penal Law § 165.45 [2]) and criminal possession of a controlled substance in the seventh degree (§ 220.03). Defendant failed to preserve for our review his challenge to the legal sufficiency of the evidence with respect to the count of criminal possession of stolen property because the contention advanced in his motion for a trial order of dismissal concerning that count " 'was not specifically directed at the ground advanced on appeal' " (*People v Townsley*, 50 AD3d 1610, 1611, lv denied 11 NY3d 742). In any event, we conclude that the evidence is legally sufficient with respect to that count (*see generally People v Bleakley*, 69 NY2d 490, 495). Further, viewing the evidence in light of the elements of that count 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 id.; People v Bleakley*, 69 NY2d 490, 495). Finally, contrary to defendant's further contention, Supreme Court's "*Sandoval* compromise . . . reflects a proper exercise of the court's discretion" (*People v Thomas*, 305 AD2d 1099, lv denied 100 NY2d 600).

Entered: October 2, 2009

Patricia L. Morgan
Clerk of the Court