

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

1542

KA 08-02011

PRESENT: HURLBUTT, J.P., SMITH, CENTRA, GREEN, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

THOMAS W. STORY, DEFENDANT-APPELLANT.

CHARLES J. GREENBERG, BUFFALO, FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (MICHAEL J. HILLERY OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Michael L. D'Amico, J.), rendered September 17, 2008. The judgment convicted defendant, upon a jury verdict, of burglary in the second degree, grand larceny in the third degree, criminal possession of stolen property in the third degree, and unauthorized use of a vehicle in the third degree.

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

Memorandum: On appeal from a judgment convicting him upon a jury verdict of, inter alia, burglary in the second degree (Penal Law § 140.25 [2]), defendant contends that the evidence is not legally sufficient to support the conviction because there was inadequate corroboration of the testimony of the accomplices. Defendant failed to preserve that contention for our review by failing to move for a trial order of dismissal on that ground (see *People v Gray*, 86 NY2d 10, 19). In any event, that contention is without merit because the corroboration required by CPL 60.22 (1) was provided by evidence that defendant's fingerprints were found on both the interior and exterior of the stolen vehicle (see *People v Dawson*, 160 AD2d 719, lv denied 76 NY2d 733; see also *People v McCann*, 202 AD2d 968, affd 85 NY2d 951; *People v Seals*, 247 AD2d 349, lv denied 92 NY2d 860). "Once the statutory minimum pursuant to CPL 60.22 (1) was met, it was for the jurors to decide whether the corroborating [evidence] satisfied them that the accomplices were telling the truth" (*People v Pierce*, 303 AD2d 966, 966, lv denied 100 NY2d 565). 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).

Contrary to defendant's further contention, we conclude that the

evidence, the law, and the circumstances of this case, viewed in totality and as of the time of the representation, establish that defense counsel provided meaningful representation (see generally *People v Baldi*, 54 NY2d 137, 147). Finally, defendant failed to preserve for our review his contention that he was denied a fair trial by prosecutorial misconduct on summation (see *People v Searles*, 28 AD3d 1205, lv denied 7 NY3d 817), and we decline to exercise our power to review that contention as a matter of discretion in the interest of justice (see CPL 470.15 [6] [a]).

Entered: December 30, 2009

Patricia L. Morgan
Clerk of the Court