

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

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KA 08-01203

PRESENT: MARTOCHE, J.P., FAHEY, CARNI, SCONIERS, AND GREEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ULYSEES PARRIS, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (TIMOTHY S. DAVIS OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (PATRICK H. FIERRO OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Richard A. Keenan, J.), rendered May 25, 2006. The judgment convicted defendant, upon a jury verdict, of attempted robbery in the second degree and attempted robbery in the third 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, attempted robbery in the third degree (Penal Law §§ 110.00, 160.05). Defendant failed to renew his motion for a trial order of dismissal after presenting evidence, and he thus failed to preserve for our review his contention that the evidence is legally insufficient to support the conviction (*see People v Hines*, 97 NY2d 56, 61, *rearg denied* 97 NY2d 678; *People v Vaughan*, 48 AD3d 1069, *lv denied* 10 NY3d 845, *cert denied* ___ US ___, 129 S Ct 252). In any event, that contention is without merit. " 'The applicable statutes do not require the use or display of a weapon nor actual injury or contact with a victim [for a person to be guilty of attempted robbery] . . . All that is necessary is that there be a threatened use of force . . . , which may be implicit from the defendant's conduct or gleaned from a view of the totality of the circumstances' " (*People v Mosley*, 59 AD3d 961, 961, *lv denied* 12 NY3d 918, 13 NY3d 861; *see* § 160.00; *People v Woods*, 41 NY2d 279, 282). We conclude that "the People presented evidence from which defendant's threatened use of force could be implied" (*Mosley*, 59 AD3d at 962), i.e., the testimony of the bank employee to whom defendant handed the slip of paper and demanded large bills and the testimony of the Sheriff's Deputy to whom defendant stated, after his arrest, that he went into the bank and informed the bank employee that "it was a

robbery."

Entered: June 11, 2010

Patricia L. Morgan
Clerk of the Court