

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

1416

KA 07-01179

PRESENT: SCUDDER, P.J., MARTOCHE, GREEN, PINE, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MAURICE DELEE, DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (PHILIP ROTHSCHILD OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (BRENTON P. DADEY OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Onondaga County (John J. Brunetti, A.J.), rendered January 25, 2007. The judgment convicted defendant, upon a jury verdict, of burglary in the first degree, attempted robbery in the second degree and assault in the second degree.

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

Memorandum: On appeal from a judgment convicting him following a jury trial of various crimes arising out of a home invasion robbery, defendant contends that the conviction is not supported by legally sufficient evidence and that the verdict is against the weight of the evidence. Defendant failed to preserve for our review his contention with respect to the alleged insufficiency of the evidence because he failed to renew his motion for a trial order of dismissal after presenting evidence (*see People v Hines*, 97 NY2d 56, 61, *rearg denied* 97 NY2d 678). 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 further conclude that the verdict is not against the weight of the evidence (*see generally People v Bleakley*, 69 NY2d 490, 495). Defendant failed to preserve for our review his contention that he was denied a fair trial by prosecutorial misconduct (*see CPL 470.05 [2]; see generally People v Romero*, 7 NY3d 911, 912), and we decline to exercise our power to address that contention as a matter of discretion in the interest of justice (*see CPL 470.15 [6] [a]*). We have considered defendant's remaining contentions and conclude that they are without merit.

Entered: December 30, 2010

Patricia L. Morgan
Clerk of the Court