

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

1056

KA 08-02111

PRESENT: SCUDDER, P.J., SMITH, FAHEY, SCONIERS, AND VALENTINO, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

EDDIE B. AVILEZ, DEFENDANT-APPELLANT.

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

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (MATTHEW DUNHAM OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (David D. Egan, J.), rendered August 14, 2008. The judgment convicted defendant, upon a jury verdict, of robbery 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 following a jury trial of robbery in the second degree (Penal Law § 160.10 [1]) in connection with the home invasion of his cousin's home. We reject defendant's contention that the testimony of the accomplice was not sufficiently corroborated and thus that the evidence is legally insufficient to support the conviction. Both the accomplice and the victim testified that defendant was inside the home when the accomplice entered and that the accomplice pointed what appeared to be a handgun at defendant while defendant told the victim to give the accomplice money. The accomplice's testimony that defendant had planned the crime was sufficiently corroborated by the testimony of the victim, who observed defendant talking with the accomplice outside the home prior to the crime (*see People v Reome*, 15 NY3d 188, 191-192), and by statements defendant made to his girlfriend in a recorded telephone conversation while he was incarcerated (*see People v Mohamed*, 94 AD3d 1462, 1463, lv denied 19 NY3d 999, reconsideration denied 20 NY3d 934). The sentence is not unduly harsh or severe.

Entered: November 8, 2013

Frances E. Cafarell
Clerk of the Court