

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

1160

KA 14-02212

PRESENT: CARNI, J.P., LINDLEY, DEJOSEPH, CURRAN, AND TROUTMAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CHARLES HOOD, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (TIMOTHY P. MURPHY OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL J. FLAHERTY, JR., ACTING DISTRICT ATTORNEY, BUFFALO (MATTHEW S. SZALKOWSKI OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (Christopher J. Burns, J.), rendered December 5, 2014. The judgment convicted defendant, upon a jury verdict, of promoting prison contraband in the first 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 promoting prison contraband in the first degree (Penal Law § 205.25 [2]), defendant contends that the verdict is against the weight of the evidence. We reject that contention. The evidence at trial established that defendant, an inmate in state prison, knowingly possessed the contraband in question, i.e., a razor blade melted into a pen cap that was found in his sock. Thus, viewing the evidence in light of the elements of the crime 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).

Defendant's contention that Supreme Court erred in allowing the People to introduce testimony that defendant made an inculpatory statement, i.e., that the contraband was his, is unpreserved for our review inasmuch as he failed to move to suppress that evidence (*see generally CPL 470.05 [2]*), and we decline to review defendant's contention as a matter of discretion in the interest of justice (*see CPL 470.15 [6] [a]*).

Finally, the sentence is not unduly harsh or severe.

Entered: December 23, 2016

Frances E. Cafarell
Clerk of the Court