

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

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KA 16-01937

PRESENT: SMITH, J.P., CENTRA, DEJOSEPH, CURRAN, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ISAAH S. CORMACK, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (BARBARA J. DAVIES OF COUNSEL), FOR DEFENDANT-APPELLANT.

ISAAH S. CORMACK, DEFENDANT-APPELLANT PRO SE.

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (COLIN X. FITZGERALD OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Thomas P. Franczyk, J.), rendered October 13, 2016. The judgment convicted defendant, upon a nonjury verdict, of assault in the first degree.

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

Memorandum: Defendant appeals from a judgment convicting him, after a nonjury trial, of assault in the first degree (Penal Law § 120.10 [1]). The charge arose after the victim, who had been in a relationship with defendant's wife, was shot and injured during a house party.

We reject defendant's contention in his main and pro se supplemental briefs that the evidence is legally insufficient to support the conviction. " 'It is well settled that, even in circumstantial evidence cases, the standard for appellate review of legal sufficiency issues is whether any valid line of reasoning and permissible inferences could lead a rational person to the conclusion reached by the [factfinder] on the basis of the evidence at trial, viewed in the light most favorable to the People' " (*People v Clark*, 142 AD3d 1339, 1340 [4th Dept 2016], *lv denied* 28 NY3d 1143 [2017]). Here, the fact that none of the witnesses testified as to seeing defendant fire the shot that injured the victim " 'does not render the evidence legally insufficient, inasmuch as there was ample circumstantial evidence establishing defendant's identity as the shooter' " (*id.* at 1341). Viewing the evidence in light of the elements of the crime in this nonjury trial (*see People v Danielson*, 9 NY3d 342, 349 [2007]), we reject defendant's further contention in his main and pro se supplemental briefs that the verdict is against the

weight of the evidence (*see generally People v Bleakley*, 69 NY2d 490, 495 [1987]).

Defendant also contends in his main and pro se supplemental briefs that the verdict is repugnant because County Court acquitted him of criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]) but convicted him of assault in the first degree (§ 120.10 [1]). We reject that contention inasmuch as his acquittal of the weapon charge did not necessarily negate an essential element of the assault charge (*see People v DeLee*, 24 NY3d 603, 608 [2014], *rearg denied* 31 NY3d 1127 [2018]; *People v Muhammad*, 17 NY3d 532, 539-540 [2011]; *People v James*, 249 AD2d 919, 919 [4th Dept 1998], *lv denied* 92 NY2d 899 [1998]).

Defendant's additional contention in his pro se supplemental brief that the court erred in failing to hold an independent source hearing with respect to a witness's pretrial identification of him from a photo array is moot inasmuch as that witness did not identify defendant at trial (*see People v Goodrell*, 130 AD3d 1502, 1503 [4th Dept 2015]). Contrary to defendant's contention in his pro se supplemental brief, we conclude that defendant received meaningful representation (*see People v Baldi*, 54 NY2d 137, 147 [1981]).

Finally, we reject defendant's contention in his main brief that the sentence is unduly harsh and severe.