

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

623

**KA 06-01243**

PRESENT: SCUDDER, P.J., SMITH, FAHEY, CARNI, AND PINE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

RICHARD R. HANKERSON, DEFENDANT-APPELLANT.

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

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (STEPHEN X. O'BRIEN OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Monroe County Court (Frank P. Geraci, Jr., J.), rendered October 12, 2005. The judgment convicted defendant, upon his plea of guilty, of attempted robbery 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 upon his plea of guilty of attempted robbery in the first degree (Penal Law §§ 110.00, 160.15 [3]). We agree with defendant that his waiver of the right to appeal is invalid. A single reference by the prosecutor to defendant's agreement to waive that right does not constitute " 'an adequate colloquy to ensure that the waiver of the right to appeal was a knowing and voluntary choice' " (*People v Braswell*, 49 AD3d 1190, 1191, *lv denied* 10 NY3d 860). Although the invalid waiver of the right to appeal thus does not encompass defendant's further contention that County Court erred in refusing to suppress identification testimony, we nevertheless reject that contention. The People met their initial burden of establishing the reasonableness of the police conduct with respect to the showup identification procedures, and defendant failed to establish that those procedures were unduly suggestive (*see People v Jackson*, 98 NY2d 555, 559; *People v Morgan*, 302 AD2d 983, 984, *lv denied* 99 NY2d 631).

Entered: April 24, 2009

Patricia L. Morgan  
Deputy Clerk of the Court