

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

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KA 06-01723

PRESENT: HURLBUTT, J.P., MARTOCHE, CENTRA, PINE, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JOVAN FULTON, DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (GERALD T. BARTH OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (JAMES P. MAXWELL OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Onondaga County (John J. Brunetti, A.J.), rendered May 30, 2006. The judgment convicted defendant, upon a jury verdict, of menacing in the second degree and criminal possession of a weapon in the third degree.

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

Memorandum: Defendant appeals from a judgment convicting him upon a jury verdict of menacing in the second degree (Penal Law § 120.14 [1]) and criminal possession of a weapon in the third degree (§ 265.02 [1]). Defendant failed to preserve for our review his contention that the evidence is legally insufficient to support the conviction (*see People v Gray*, 86 NY2d 10, 19). Furthermore, 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 conclude that the verdict is not against the weight of the evidence (*see generally People v Bleakley*, 69 NY2d 490, 495). The testimony of the People's witnesses was not " 'so unworthy of belief as to be incredible as a matter of law' " (*People v Woods*, 26 AD3d 818, 819, lv denied 7 NY3d 756, 765; *see People v Ogborn*, 57 AD3d 1430), and we see no reason to disturb the jury's resolution of credibility issues (*see generally Bleakley*, 69 NY2d at 495).

Entered: April 24, 2009

Patricia L. Morgan
Deputy Clerk of the Court