

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

880

KA 07-01966

PRESENT: MARTOCHE, J.P., SMITH, FAHEY, CARNI, AND GREEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

WILLIAM T. LOMACK, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (DAVID M. ABBATOY, JR., OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (PATRICK H. FIERRO OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Joseph D. Valentino, J.), rendered February 24, 2005. The judgment convicted defendant, upon his plea of guilty, of robbery 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 upon his plea of guilty of robbery in the first degree (Penal Law § 160.15 [2]), defendant contends that his right to due process was violated by the failure of the police to record his interrogation. Defendant failed to preserve that contention for our review (see CPL 470.05 [2]) and, in any event, it lacks merit. "[T]his Court has repeatedly determined that the failure to record a defendant's interrogation electronically does not constitute a denial of due process" (*People v Malave*, 52 AD3d 1313, 1315, *lv denied* 11 NY3d 790; see e.g. *People v Mendez*, 50 AD3d 1526, *lv denied* 11 NY3d 739; *People v Williams*, 39 AD3d 1200, *lv denied* 9 NY3d 853).

Entered: June 5, 2009

Patricia L. Morgan
Clerk of the Court