

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

1140

KA 06-01297

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

EUGENE KIMBROUGH, DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (MARY P. DAVISON OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (VICTORIA M. WHITE OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Onondaga County Court (Joseph E. Fahey, J.), rendered February 9, 2006. The judgment convicted defendant, upon a jury verdict, of attempted aggravated assault upon a police officer or a peace officer, burglary in the third degree and criminal possession of stolen property in the fourth 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, inter alia, attempted aggravated assault upon a police officer or a peace officer (Penal Law §§ 110.00, 120.11). Defendant failed to preserve for our review his contention that the conviction of that crime is not supported by legally sufficient evidence inasmuch as "his motion for a trial order of dismissal with respect to that [crime] 'was not specifically directed at the ground[s] advanced on appeal' " (*People v Townsley*, 50 AD3d 1610, 1611, lv denied 11 NY3d 742; see *People v Gray*, 86 NY2d 10, 19). Furthermore, 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 with respect to that crime is not against the weight of the evidence (see generally *People v Bleakley*, 69 NY2d 490, 495).

Finally, the sentence is not unduly harsh or severe.

Entered: November 13, 2009

Patricia L. Morgan
Clerk of the Court