

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

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KA 05-02229

PRESENT: CENTRA, J.P., FAHEY, LINDLEY, GREEN, AND MARTOCHE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JAVONNE L. SCOTT, DEFENDANT-APPELLANT.

MULDOON & GETZ, ROCHESTER (MARTIN P. MCCARTHY, II, OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (LESLIE E. SWIFT OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Joseph D. Valentino, J.), rendered June 14, 2005. The judgment convicted defendant, upon a jury verdict, of manslaughter 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, following a jury trial, of manslaughter in the first degree (Penal Law § 125.20 [1]), defendant contends that Supreme Court erred in denying his *Batson* challenge. Defendant failed to object to the court's procedure for determining his *Batson* challenge and thus defendant failed to preserve his contention for our review (see *People v Parker*, 304 AD2d 146, 156, *lv denied* 100 NY2d 585). Defendant also failed to preserve for our review his contention that the court erred in denying his motion for a mistrial based on juror misconduct. Although defendant contends that the court failed to make a sufficient inquiry of the other jurors with respect to the misconduct of the juror in question, he failed to raise that issue in support of the motion (see generally *People v Torres*, 80 NY2d 944, *rearg denied* 81 NY2d 784). We decline to exercise our power to review those contentions as a matter of discretion in the interest of justice (see CPL 470.15 [6] [a]). Finally, the sentence is not unduly harsh or severe.

Entered: February 18, 2011

Patricia L. Morgan
Clerk of the Court