

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

1091

KA 09-00768

PRESENT: SMITH, J.P., CARNI, LINDLEY, SCONIERS, AND MARTOCHE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CARL NICHOLS, DEFENDANT-APPELLANT.

WYOMING COUNTY-ATTICA LEGAL AID BUREAU, INC., LIVINGSTON COUNTY CONFLICT DEFENDER, WARSAW (NORMAN P. EFFMAN OF COUNSEL), FOR DEFENDANT-APPELLANT.

THOMAS E. MORAN, DISTRICT ATTORNEY, GENESEO (ERIC R. SCHIENER OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Livingston County Court (Robert B. Wiggins, J.), rendered June 3, 2008. The judgment convicted defendant, upon a jury verdict, of grand larceny in the third degree, criminal possession of stolen property in the third degree, criminal mischief in the fourth degree (two counts) and reckless endangerment in the second 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, grand larceny in the third degree (Penal Law former § 155.35) and criminal possession of stolen property in the third degree (§ 165.50). We reject defendant's contention that County Court erred in refusing to suppress an in-court identification of defendant based on an unduly suggestive photo array identification procedure. The People met their burden of establishing the reasonableness of the police conduct in conducting the identification procedure in question, and defendant failed to meet his burden of proving that the procedure was unduly suggestive (*see People v Chipp*, 75 NY2d 327, 335, *cert denied* 498 US 833).

Defendant failed to renew his motion for a trial order of dismissal after presenting evidence, and thus he failed to preserve for our review his contention that the conviction is not supported by legally sufficient evidence (*see People v Hines*, 97 NY2d 56, 61, *rearg denied* 97 NY2d 678; *People v Pearson*, 26 AD3d 783, *lv denied* 6 NY3d 851). In any event, that contention is without merit (*see generally*

People v Bleakley, 69 NY2d 490, 495).

Entered: November 18, 2011

Patricia L. Morgan
Clerk of the Court