

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

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KA 14-00835

PRESENT: SCUDDER, P.J., SMITH, CARNI, LINDLEY, AND VALENTINO, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TIMMY L. SIMMONS, DEFENDANT-APPELLANT.

PATRICIA M. MCGRATH, LOCKPORT, FOR DEFENDANT-APPELLANT.

MICHAEL J. VIOLANTE, DISTRICT ATTORNEY, LOCKPORT (THOMAS H. BRANDT OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Niagara County (Matthew J. Murphy, III, A.J.), rendered April 23, 2014. The judgment convicted defendant, upon a jury verdict, of criminal possession of a weapon in the fourth 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 criminal possession of a weapon in the fourth degree (Penal Law § 265.01 [4]), defendant contends that the evidence is legally insufficient to support the conviction because the People failed to present evidence that he possessed a shotgun on or about the date charged in the accusatory instrument and failed to present legally sufficient evidence of possession. Because defendant's motion for a trial order of dismissal and his renewed motion after putting in his own proof were not " 'specifically directed' " at the first alleged error, defendant failed to preserve that contention for our review (*People v Gray*, 86 NY2d 10, 19). We reject defendant's challenge to the sufficiency of the evidence that he possessed the shotgun. We conclude that, "viewing the facts in [the] light most favorable to the People, 'there is a valid line of reasoning and permissible inferences from which a rational jury could have found the elements of the crime proved beyond a reasonable doubt' " (*People v Danielson*, 9 NY3d 342, 349, quoting *People v Acosta*, 80 NY2d 665, 672).

Defendant further contends that he was deprived of a fair trial by prosecutorial misconduct on summation. By failing to object to any of the alleged instances of prosecutorial misconduct, defendant failed to preserve that contention for our review (see CPL 470.05 [2]; *People v Easley*, 124 AD3d 1284, 1285, *lv denied* 25 NY3d 1200). In any event,

we conclude that defendant's contention is without merit.

Entered: November 13, 2015

Frances E. Cafarell
Clerk of the Court