

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D57223

L/htr

_____AD3d_____

Argued - May 29, 2018

RUTH C. BALKIN, J.P.
LEONARD B. AUSTIN
HECTOR D. LASALLE
ANGELA G. IANNACCI, JJ.

2016-11860

DECISION & ORDER

The People, etc., respondent,
v Brontie O’Neal, appellant.

(Ind. No. 1361/15)

Laurette D. Mulry, Riverhead, NY (Alfred J. Cicale of counsel), for appellant.

Timothy D. Sini, District Attorney, Riverhead, NY (Grazia DiVincenzo of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (John J. Toomey, J.), rendered October 20, 2016, convicting him of assault in the second degree (four counts) and grand larceny in the fourth degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that his plea allocution was factually insufficient to establish the crime of assault in the second degree, because the court failed to inquire whether he intended to cause serious physical injury to the victim (*see* Penal Law § 120.05[1]). This contention is unpreserved for appellate review, since the defendant failed to move to withdraw his plea of guilty on that ground (*see People v Pryor*, 11 AD3d 565). Moreover, the exception to the preservation requirement set forth in *People v Lopez* (71 NY2d 662, 665) does not apply, since there was nothing in the defendant’s factual recitation that would negate an essential element of assault in the second degree or cast significant doubt on the defendant’s guilt (*see People v Swanton*, 27 AD3d 591). In any event, the defendant’s contention is without merit.

BALKIN, J.P., AUSTIN, LASALLE and IANNACCI, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court

November 7, 2018

PEOPLE v O’NEAL, BRONTIE