

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

**996**

**KA 15-00884**

PRESENT: CENTRA, J.P., PERADOTTO, TROUTMAN, WINSLOW, AND DEJOSEPH, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KHALEEF REED, DEFENDANT-APPELLANT.

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TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (DAVID R. JUERGENS OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (DANIEL GROSS OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Monroe County Court (Douglas A. Randall, J.), rendered January 30, 2015. The judgment convicted defendant, upon a jury verdict, of murder 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 murder in the second degree (Penal Law § 125.25 [1]) in connection with a shooting death. Contrary to defendant's contention, viewing the evidence in light of the elements of the crime as charged to the jury (*see People v Danielson*, 9 NY3d 342, 349 [2007]), we conclude that the verdict is not against the weight of the evidence (*see generally People v Bleakley*, 69 NY2d 490, 495 [1987]). In addition to other evidence presented by the People, an eyewitness identified defendant as the shooter, and DNA evidence linked defendant to a hat recovered from the crime scene.

Defendant further contends that County Court erred in admitting a 911 call in evidence because the call contained inadmissible hearsay and also violated his constitutional rights to due process and confrontation. We conclude, however, that defendant's contention is not preserved for our review because, during the jury charge, "the court provided a curative instruction that, in the absence of an objection or a motion for a mistrial, 'must be deemed to have corrected the error to the defendant's satisfaction' " (*People v Szatanek*, 169 AD3d 1448, 1449 [4th Dept 2019], *lv denied* 33 NY3d 981 [2019], quoting *People v Heide*, 84 NY2d 943, 944 [1994]; *see People v Johnston*, 192 AD3d 1516, 1521 [4th Dept 2021], *lv denied* 37 NY3d 972 [2021]). Finally, we reject defendant's contention that he was denied effective assistance of counsel based upon defense counsel's failure either to object when the People offered the 911 call in evidence or

to ask the court to strike the call from evidence after it was played for the jury. Although defendant did not receive error-free representation, "[t]he test is reasonable competence, not perfect representation" (*People v Oathout*, 21 NY3d 127, 128 [2013] [internal quotation marks omitted]). Viewing the evidence, the law, and the circumstances of this case as a whole and as of the time of the representation, we conclude that defendant was afforded meaningful representation (see *People v Baldi*, 54 NY2d 137, 147 [1981]; *People v Stumbo*, 155 AD3d 1604, 1605-1606 [4th Dept 2017], *lv denied* 30 NY3d 1120 [2018]).

Entered: November 19, 2021

Ann Dillon Flynn  
Clerk of the Court