

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

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KA 17-00562

PRESENT: PERADOTTO, J.P., LINDLEY, BANNISTER, MONTOUR, AND OGDEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

LEVI WRIGHT, JR., DEFENDANT-APPELLANT.

BRIDGET L. FIELD, ROCHESTER, FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (LISA GRAY OF COUNSEL),
FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Melchor E. Castro, A.J.), rendered December 2, 2016. The judgment convicted defendant upon a jury verdict of burglary in the first degree (two counts), criminal possession of a weapon in the second degree (two counts), assault in the second degree and criminal use of a firearm in the first 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 two counts each of burglary in the first degree (Penal Law § 140.30 [1], [2]) and criminal possession of a weapon in the second degree (§ 265.03 [1] [b]; [3]), and one count each of assault in the second degree (§ 120.05 [2]) and criminal use of a firearm in the first degree (§ 265.09 [1]). Defendant's challenge to the legal sufficiency of the evidence supporting his conviction of the burglary in the first degree counts is unpreserved for our review because "his motion for a trial order of dismissal was not specifically directed at th[e] alleged shortcoming[s] in the evidence" (*People v Vail*, 174 AD3d 1365, 1366 [4th Dept 2019] [internal quotation marks omitted]; see *People v Lasher*, 163 AD3d 1424, 1425 [4th Dept 2018], *lv denied* 32 NY3d 1005 [2018]). Viewing the evidence in light of the elements of the crime of burglary in the first degree as charged to the jury (see *People v Danielson*, 9 NY3d 342, 349 [2007]), we reject defendant's further contention that the verdict with respect to those counts is against the weight of the evidence (see generally *People v Bleakley*, 69 NY2d 490, 495 [1987]). Indeed, an acquittal would have been unreasonable on this record (see generally *People v Bradley*, 204 AD3d 1420, 1420 [4th Dept 2022], *lv denied* 38 NY3d 1132 [2022]; *People v Isaac*, 195 AD3d 1410, 1410 [4th Dept 2021], *lv denied* 37 NY3d 992 [2021]).

Defendant expressly consented to County Court's *Sandoval* compromise, and thus he waived his contention that the *Sandoval* ruling constitutes an abuse of discretion (see *People v Henry*, 74 AD3d 1860, 1862 [4th Dept 2010], *lv denied* 15 NY3d 852 [2010]; see generally *People v Hansen*, 95 NY2d 227, 230 n 1 [2000]). Contrary to defendant's contention, his sentence is not unduly harsh or severe.

We have reviewed defendant's remaining contentions and conclude that none warrants modification or reversal of the judgment.

Entered: March 17, 2023

Ann Dillon Flynn
Clerk of the Court