

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

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KA 21-00920

PRESENT: WHALEN, P.J., CURRAN, GREENWOOD, AND KEANE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TRE'SIONE R. BOWSER, DEFENDANT-APPELLANT.

KATHLEEN KUGLER, CONFLICT DEFENDER, LOCKPORT (JESSICA J. BURGASSER OF COUNSEL), FOR DEFENDANT-APPELLANT.

BRIAN D. SEAMAN, DISTRICT ATTORNEY, LOCKPORT (LAURA T. JORDAN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Niagara County (Richard C. Kloch, Sr., A.J.), rendered April 7, 2021. The judgment convicted defendant upon a plea of guilty of assault in the second degree (two counts).

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of two counts of assault in the second degree (Penal Law § 120.05 [2]). We affirm. Defendant's challenge to the legal sufficiency of the evidence before the grand jury and his contention that evidence before the grand jury was admitted without an adequate foundation do not survive his guilty plea (*see People v Hansen*, 95 NY2d 227, 231-232 [2000]; *People v Scarbrough*, 162 AD3d 1575, 1575 [4th Dept 2018]). Furthermore, we conclude that "[b]y pleading guilty, defendant [also] forfeited review of his contention that the integrity of the grand jury proceedings was impaired . . . by the prosecutor's failure to give a circumstantial evidence charge" (*People v Wilkins*, 1 AD3d 962, 963 [4th Dept 2003], *lv denied* 1 NY3d 603 [2004]; *see People v Wheeler*, 216 AD3d 1314, 1315-1316 [3d Dept 2023], *lv denied* 40 NY3d 1082 [2023]; *People v Ivey* [appeal No. 2], 229 AD2d 1020, 1021 [4th Dept 1996], *lv denied* 89 NY2d 865 [1996]).

Entered: March 21, 2025

Ann Dillon Flynn
Clerk of the Court