

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

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KA 21-00423

PRESENT: WHALEN, P.J., BANNISTER, OGDEN, NOWAK, AND KEANE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CHRISTOPHER WERENSKI, DEFENDANT-APPELLANT.

TINA L. HARTWELL, PUBLIC DEFENDER, UTICA (JESSICA P. CUNNINGHAM OF COUNSEL), FOR DEFENDANT-APPELLANT.

TODD C. CARVILLE, DISTRICT ATTORNEY, UTICA (MICHAEL A. LABELLA OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Oneida County Court (Michael L. Dwyer, J.), rendered May 29, 2015. The judgment convicted defendant upon a jury verdict of murder in the second degree, criminal possession of a weapon in the third degree, and aggravated criminal contempt.

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, inter alia, murder in the second degree (Penal Law § 125.25 [1]), in connection with the fatal stabbing of his wife. We affirm.

Defendant did not preserve his contention that County Court erred in failing to charge the jury on extreme emotional disturbance inasmuch as defense counsel never requested that charge at the charge conference (*see People v Bailey*, 142 AD3d 1096, 1097 [2d Dept 2016], *lv denied* 28 NY3d 1181 [2017]) and did not object to the charge as given (*see People v VanGorden*, 147 AD3d 1436, 1440 [4th Dept 2017], *lv denied* 29 NY3d 1037 [2017]).

Defendant further contends that he received ineffective assistance of counsel. Inasmuch as defendant's contention is based upon matters outside the record, it is not properly before us on direct appeal and must be pursued by way of a motion pursuant to CPL article 440 (*see People v Jackson*, 153 AD3d 1605, 1606 [4th Dept 2017], *lv denied* 30 NY3d 1106 [2018]).

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: April 25, 2025

Ann Dillon Flynn
Clerk of the Court