

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

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**KA 23-00649**

PRESENT: CURRAN, J.P., MONTOUR, SMITH, OGDEN, AND DELCONTE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JAFARY BROWN, DEFENDANT-APPELLANT.

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JULIE CIANCA, PUBLIC DEFENDER, ROCHESTER (SABRINA A. BREMER OF COUNSEL), FOR DEFENDANT-APPELLANT.

PERRY DUCKLES, ACTING DISTRICT ATTORNEY, ROCHESTER (LISA GRAY OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Monroe County Court (Julie M. Hahn, J.), rendered January 27, 2023. The judgment convicted defendant, upon a jury verdict, of unauthorized use of a vehicle in the third 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 unauthorized use of a vehicle in the third degree (Penal Law § 165.05 [1]). We affirm.

Defendant contends that County Court committed reversible error in its *Sandoval* ruling by allowing the People, if defendant chose to testify, to cross-examine him fully regarding a prior felony conviction of criminal mischief in the third degree, including with respect to the underlying facts of that conviction. Initially, contrary to the People's assertion, we conclude that defendant's contention is preserved for our review, even in the absence of an objection after the court's "ultimate" *Sandoval* ruling. Defendant "expressly requested, without success on the ground now advanced on appeal, a ruling that the People not be permitted to cross-examine him regarding the prior conviction, and he 'is deemed to have thereby protested the court's ultimate disposition of the matter or failure to rule . . . accordingly sufficiently to raise a question of law with respect to such disposition or failure regardless of whether any actual protest thereto was registered' " (*People v Fuller*, 174 AD3d 1335, 1336 [4th Dept 2019], *lv denied* 34 NY3d 951 [2019], quoting CPL 470.05 [2]; see *People v Herman*, 217 AD3d 1469, 1471 [4th Dept 2023], *lv denied* 40 NY3d 997 [2023]; see generally *People v Jackson*, 29 NY3d 18, 23-24 [2017]). Defendant's contention, however, lacks merit. The prior conviction "showed the willingness of defendant to place his own

interests above those of society" (*People v Salsbery*, 78 AD3d 1624, 1626 [4th Dept 2010], *lv denied* 16 NY3d 836 [2011]), and defendant failed to meet his burden "of demonstrating that the prejudicial effect of the admission of evidence [of that conviction] for impeachment purposes would so far outweigh the probative worth of such evidence on the issue of credibility as to warrant its exclusion" (*People v Sandoval*, 34 NY2d 371, 378 [1974]; *see Herman*, 217 AD3d at 1471). Contrary to defendant's assertion, "[c]ross-examination of a defendant concerning a prior crime is not prohibited solely because of the similarity between that crime and the crime charged" (*People v Vanwuyckhuyse*, 224 AD3d 1315, 1316 [4th Dept 2024], *lv denied* 41 NY3d 967 [2024] [internal quotation marks omitted]; *see People v Hayes*, 97 NY2d 203, 208 [2002]).

Defendant did not preserve for our review his related contention that the court failed to adequately set forth its reasoning with respect to its balancing of the appropriate *Sandoval* factors (*see CPL* 470.05 [2]; *Herman*, 217 AD3d at 1471). In any event, "[o]ur law does not require 'the application of any particular balancing process' in *Sandoval* determinations," and "an exercise of a trial court's *Sandoval* discretion should not be disturbed merely because the court did not provide a detailed recitation of its underlying reasoning . . . , particularly where, as here, the basis of the court's decision may be inferred from the parties' arguments" (*People v Walker*, 83 NY2d 455, 459 [1994]; *see Herman*, 217 AD3d at 1471).