

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

862

KA 08-00486

PRESENT: SMITH, J.P., LINDLEY, SCONIERS, PINE, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DEMETRIUS F. SAMPSON, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (TIMOTHY S. DAVIS OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (LESLIE E. SWIFT OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Joseph D. Valentino, J.), rendered March 7, 2007. The judgment convicted defendant, upon a jury verdict, of murder in the second degree, criminal possession of a weapon in the second degree and criminal possession of a weapon in the third degree.

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

Memorandum: On appeal from a judgment convicting him upon a jury verdict of, inter alia, murder in the second degree (Penal Law § 125.25 [3]), defendant contends that the prosecutor's peremptory challenges with respect to two prospective jurors constitute *Batson* violations. As defendant correctly concedes, he raises that contention with respect to one of the two prospective jurors for the first time on appeal and thus failed to preserve for our review his contention concerning that prospective juror (see CPL 470.05 [2]), and we decline defendant's request that we exercise our power to review the contention with respect to that prospective juror as a matter of discretion in the interest of justice (see CPL 470.15 [6] [a]). With respect to the second prospective juror, we agree with Supreme Court that the prosecutor's explanation for exercising the peremptory challenge was race-neutral and not pretextual (see generally *People v Wedlington*, 67 AD3d 1472, 1473-1474, lv denied 14 NY3d 807; *People v Thompson*, 59 AD3d 1115, 1117, lv denied 12 NY3d 852, 860).

Entered: June 11, 2010

Patricia L. Morgan
Clerk of the Court