

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

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KA 17-01321

PRESENT: WHALEN, P.J., CENTRA, PERADOTTO, NEMOYER, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

FRANK GARCIA, DEFENDANT-APPELLANT.

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

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (SCOTT MYLES OF COUNSEL), FOR RESPONDENT.

Appeal from a resentencing of the Monroe County Court (Sam L. Valleriani, J.), rendered June 2, 2017. Defendant was resentenced upon his conviction of attempted murder in the first degree.

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

Memorandum: Defendant was convicted upon a jury verdict of two counts of murder in the first degree (Penal Law § 125.27 [1] [a] [viii]; [b]) and attempted murder in the first degree (§§ 110.00, 125.27 [1] [a] [viii]; [b]). On a prior appeal, we modified the judgment of conviction by vacating the sentence imposed on count three of the indictment and remitted the matter to County Court for resentencing (*People v Garcia*, 148 AD3d 1559, 1561-1562 [4th Dept 2017], *lv denied* 30 NY3d 980 [2017]). Defendant now appeals from the resentencing. We affirm.

Defendant contends that the court erred in failing sua sponte to order a competency examination pursuant to CPL 730.30 (1) based on defendant's statements during the resentencing. "It is well settled that the decision to order a competency examination under CPL 730.30 (1) lies within the sound discretion of the trial court" (*People v Williams*, 35 AD3d 1273, 1274 [4th Dept 2006], *lv denied* 8 NY3d 928 [2007]; *see People v Morgan*, 87 NY2d 878, 879-880 [1995]). "A defendant is presumed competent . . . , and the court is under no obligation to issue an order of examination . . . unless it has 'reasonable ground . . . to believe that the defendant was an incapacitated person' " (*Morgan*, 87 NY2d at 880). Based on the record before us, we conclude that the court did not abuse its discretion in failing sua sponte to order a competency examination (*see id.* at 879-880; *People v Estruch*, 164 AD3d 1632, 1633 [4th Dept 2018], *lv denied* 32 NY3d 1171 [2019]). Defendant's remarks "were suggestive of

a[n] . . . obstructionist frame of mind, not an incompetent one"
(*People v Johnson*, 145 AD3d 1109, 1110 [3d Dept 2016], *lv denied* 29
NY3d 949 [2017]).

Entered: March 11, 2022

Ann Dillon Flynn
Clerk of the Court