

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

1116

KA 11-02605

PRESENT: SMITH, J.P., DEJOSEPH, CURRAN, AND SCUDDER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ARTAMION J. MOORE, DEFENDANT-APPELLANT.

CHARLES T. NOCE, CONFLICT DEFENDER, ROCHESTER (KIMBERLY J. CZAPRANSKI OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (DANIEL GROSS OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (John L. DeMarco, J.), rendered December 14, 2011. The judgment convicted defendant, upon a jury verdict, of murder in the second degree, criminal possession of a weapon in the second degree (two counts) and criminal possession of a weapon in the third degree.

It is hereby ORDERED that the case is held, the decision is reserved, and the matter is remitted to Monroe County Court for further proceedings in accordance with the following 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]). Viewing the evidence in light of the elements of the crimes as charged to the jury (*see People v Danielson*, 9 NY3d 342, 349), we conclude that the verdict is not against the weight of the evidence (*see People v Bleakley*, 69 NY2d 490, 495).

At the close of the People's case, defendant moved for a trial order of dismissal, and County Court denied that motion with respect to the charge of murder in the second degree and reserved decision with respect to the remaining charges. The matter was submitted to the jury, which issued a verdict convicting defendant of the charges. The court never ruled on the remainder of the motion. On appeal, defendant contends that the evidence is not legally sufficient to support the charges and thus that the court erred in denying his motion. We do "not address that contention because, in accordance with *People v Concepcion* (17 NY3d 192, 197-198) and *People v LaFontaine* (92 NY2d 470, 474, *rearg denied* 93 NY2d 849), 'we cannot deem the court's failure to rule on the . . . motion as a denial thereof' " (*People v White*, 134 AD3d 1414, 1415; *see People v Spratley*, 96 AD3d 1420, 1421). We therefore hold the case, reserve decision, and remit the matter to County Court for a ruling on the

remainder of the motion.

Entered: February 10, 2017

Frances E. Cafarell
Clerk of the Court