

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

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**KA 17-00955**

PRESENT: WHALEN, P.J., SMITH, LINDLEY, CURRAN, AND DEJOSEPH, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ESTEBAN OQUENDO, DEFENDANT-APPELLANT.

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TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER, JEFFREY WICKS, PLLC (JEFFREY WICKS OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (LISA GRAY OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Supreme Court, Monroe County (Alex R. Renzi, J.), rendered October 28, 2016. The judgment convicted defendant, upon a jury verdict, of criminal possession of a controlled substance 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 criminal possession of a controlled substance in the third degree (Penal Law § 220.16 [1]). Contrary to defendant's contention, we conclude that Supreme Court did not abuse its discretion in permitting the People to introduce evidence that his codefendant was in possession of a loaded gun inasmuch as the probative value of the evidence was not " 'substantially outweighed by the potential for prejudice' " (*People v Harris*, 26 NY3d 1, 5 [2015], quoting *People v Mateo*, 2 NY3d 383, 425 [2004], cert denied 542 US 946 [2004]).

Viewing the evidence in light of the elements of the crime as charged to the jury (*see People v Danielson*, 9 NY3d 342, 349 [2007]), we reject defendant's contention that the verdict is against the weight of the evidence (*see People v Bleakley*, 69 NY2d 490, 495 [1987]).

The sentence is not unduly harsh or severe. Finally, we have reviewed defendant's remaining contention and conclude that it is without merit.

Entered: November 19, 2021

Ann Dillon Flynn  
Clerk of the Court