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

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KA 19-01574
PRESENT: WHALEN, P.J., LINDLEY, CURRAN, BANNISTER, AND GREENWOOD, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V MEMORANDUM AND ORDER

LATIFAH CANNON, DEFENDANT-APPELLANT.

JULIE CIANCA, PUBLIC DEFENDER, ROCHESTER, EASTON THOMPSON KASPEREK SHIFFRIN LLP (BRIAN SHIFFRIN OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (NANCY GILLIGAN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Judith A. Sinclair, J.), rendered June 13, 2019. The judgment convicted defendant upon a jury verdict of robbery in the first degree and endangering the welfare of a child.

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

Memorandum: Defendant appeals from a judgment convicting her upon a jury verdict of robbery in the first degree (Penal Law § 160.15 [4]) and endangering the welfare of a child (§ 260.10 [1]). Viewing the evidence in light of the elements of the crime of robbery in the first degree as charged to the jury (*see People v Danielson*, 9 NY3d 342, 349 [2007]), we conclude that the verdict with respect to that count is not against the weight of the evidence (*see generally People v Bleakley*, 69 NY2d 490, 495 [1987]). Although a different verdict would not have been unreasonable, it cannot be said that the jury "failed to give the evidence the weight it should be accorded" (*id.*; *see People v Kalinowski*, 118 AD3d 1434, 1436 [4th Dept 2014], *lv denied* 23 NY3d 1064 [2014]). We reject defendant's further contention that Supreme Court erred in denying her *Batson* challenge with respect to two prospective jurors. The People gave race-neutral reasons for the peremptory challenges, and defendant did not meet her ultimate burden of establishing that those reasons were pretextual (*see People v Switts*, 148 AD3d 1610, 1611 [4th Dept 2017], *lv denied* 29 NY3d 1087 [2017]; *People v Johnson*, 38 AD3d 1327, 1328 [4th Dept 2007], *lv denied* 9 NY3d 866 [2007]). "[T]he court was in the best position to observe the demeanor of the prospective juror[s] and the prosecutor, and its . . . determination that the prosecutor's explanation[s were] race-neutral and not pretextual is entitled to great deference" (*People v Dandridge*, 26 AD3d 779, 780 [4th Dept 2006], *lv denied* 9 NY3d 1032 [2008] [internal quotation marks omitted]). We see no

reason to disturb that determination. Finally, we reject defendant's contention that she was denied a fair trial because of improper statements made by the prosecutor during summation. "To the extent that a portion of the prosecutor's summation could be viewed as containing a misstatement of law, . . . any prejudice was avoided by the court's instructions, which the jury is presumed to have followed" (*People v Harper*, 132 AD3d 1230, 1234 [4th Dept 2015], *lv denied* 27 NY3d 998 [2016] [internal quotation marks omitted]; *see People v Padin*, 121 AD3d 628, 629 [1st Dept 2014], *lv denied* 25 NY3d 1169 [2015]).

Entered: June 9, 2023

Ann Dillon Flynn
Clerk of the Court