

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

645

KA 20-00765

PRESENT: SMITH, J.P., BANNISTER, OGDEN, GREENWOOD, AND NOWAK, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TYLER J. NEAL, DEFENDANT-APPELLANT.

MARK D. FUNK, CONFLICT DEFENDER, ROCHESTER (CAROLYN WALTHER OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (MARTIN P. MCCARTHY, II, OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Alex R. Renzi, J.), rendered February 5, 2020. The judgment convicted defendant, upon his plea of guilty, of attempted burglary in the second degree.

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

Memorandum: Defendant appeals from a judgment convicting him, upon his plea of guilty, of attempted burglary in the second degree (Penal Law §§ 110.00, 140.25 [2]). Defendant contends that his waiver of the right to appeal is invalid and that the police lacked probable cause to arrest him. Even assuming, arguendo, that defendant's waiver of the right to appeal is invalid and thus does not preclude our review, we conclude that probable cause existed for defendant's arrest. During the suppression hearing, police officers testified, among other things, that defendant and his codefendant were placed, by means of their ankle monitors, at the locations of burglarized homes. The officers also testified that as part of their investigation they obtained surveillance footage that showed defendant in a pawnshop with property matching items that had been stolen (*see generally People v Muhammad*, 204 AD3d 1402, 1403 [4th Dept 2022], *lv denied* 38 NY3d 1073 [2022]; *People v Young*, 152 AD3d 981, 982-983 [3d Dept 2017], *lv denied* 30 NY3d 955 [2017]).

Entered: October 6, 2023

Ann Dillon Flynn
Clerk of the Court