

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

1006

KA 19-01487

PRESENT: LINDLEY, J.P., CURRAN, BANNISTER, GREENWOOD, AND DELCONTE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KEITH G. BROWN, DEFENDANT-APPELLANT.

JULIE CIANCA, PUBLIC DEFENDER, ROCHESTER (JAMES ECKERT OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (MERIDETH H. SMITH OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Douglas A. Randall, J.), rendered May 28, 2019. The judgment convicted defendant upon a jury verdict of attempted criminal purchase or disposal of a weapon.

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

Memorandum: On appeal from a judgment convicting him upon a jury verdict of attempted criminal purchase or disposal of a weapon (Penal Law §§ 110.00, 265.17 [1]), defendant contends that the conviction is not supported by legally sufficient evidence that he was prohibited from lawfully acquiring a firearm at the time of the attempted purchase. We reject that contention (*see generally People v Bleakley*, 69 NY2d 490, 495 [1987]). Furthermore, 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 generally Bleakley*, 69 NY2d at 495).

Contrary to defendant's further contention, County Court properly denied his *Batson* challenge with respect to two prospective jurors. The People gave race-neutral reasons for the peremptory challenges, and defendant did not meet his ultimate burden of establishing that those reasons were pretextual (*see People v Wells*, 7 NY3d 51, 58 [2006]; *People v Thompson*, 59 AD3d 1115, 1117 [4th Dept 2009], *lv denied* 12 NY3d 860 [2009]; *see generally People v Switts*, 148 AD3d 1610, 1611 [4th Dept 2017], *lv denied* 29 NY3d 1087 [2017]). The court was "in the best position to evaluate the demeanor of the prospective juror[s], the prosecutor, and defense counsel, and . . . its determination that the prosecutor's proffered reasons for striking the prospective juror[s] were not pretextual is entitled to great deference" (*People v Herrod*,

174 AD3d 1322, 1324 [4th Dept 2019], *lv denied* 34 NY3d 951 [2019]; see *People v Ross*, 118 AD3d 1321, 1322 [4th Dept 2014], *lv denied* 23 NY3d 1067 [2014], *reconsideration denied* 24 NY3d 1122 [2015]). With respect to a third prospective juror, defendant's *Batson* challenge is not preserved for our review inasmuch as defendant did not object or attempt to respond after the People offered a race-neutral explanation for the peremptory challenge (see *People v James*, 99 NY2d 264, 271-272 [2002]; *People v Singleton*, 192 AD3d 1536, 1538 [4th Dept 2021]; *People v Scott*, 81 AD3d 1470, 1471 [4th Dept 2011], *lv denied* 17 NY3d 801 [2011]).

Finally, we reject defendant's contention that he was denied the right to confrontation with respect to the People's evidence of the operability of the firearm that defendant attempted to purchase (see generally *People v Wakefield*, 38 NY3d 367, 385-386 [2022], *rearg denied* 38 NY3d 1121 [2022], *cert denied* – US –, 143 S Ct 451 [2022], *reh denied* – US –, 143 S Ct 1799 [2023]).