

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

1098

KA 09-01279

PRESENT: FAHEY, J.P., PERADOTTO, LINDLEY, SCONIERS, AND WHALEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

VERNON L. CARTER, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JAMES ECKERT OF COUNSEL), FOR DEFENDANT-APPELLANT.

VERNON L. CARTER, DEFENDANT-APPELLANT PRO SE.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (MATTHEW DUNHAM OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Richard A. Keenan, J.), rendered May 21, 2009. The judgment convicted defendant, upon a jury verdict, of 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 a jury verdict, of burglary in the second degree (Penal Law § 140.25 [2]). County Court properly denied defendant's request to charge criminal trespass in the second degree (§ 140.15 [1]) as a lesser included offense of burglary in the second degree because "[t]here is no reasonable view of the evidence that defendant entered the building without the intent to commit a crime therein" (*People v Smith*, 12 AD3d 1106, 1107, lv denied 4 NY3d 767; see *People v Rickett*, 94 NY2d 929, 930). 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), we reject defendant's contention that the verdict is against the weight of the evidence (see generally *People v Bleakley*, 69 NY2d 490, 495). To the contrary, "[t]he overwhelming weight of the evidence supports the [verdict convicting defendant] of burglary in the second degree" (*People v Moore*, 190 AD2d 1023, 1023, lv denied 81 NY2d 1077). We have considered defendant's contentions in his pro se supplemental brief and conclude that they are without merit.

Entered: November 8, 2013

Frances E. Cafarell
Clerk of the Court