

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

**412**

**KA 15-00115**

PRESENT: WHALEN, P.J., SMITH, PERADOTTO, CARNI, AND DEJOSEPH, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KEION L. PETERSON, DEFENDANT-APPELLANT.

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KIMBERLY J. CZAPRANSKI, FAIRPORT, FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (SCOTT MYLES OF COUNSEL),  
FOR RESPONDENT.

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Appeal from a judgment of the Monroe County Court (James J. Piampiano, J.), rendered October 14, 2014. The judgment convicted defendant, upon a nonjury verdict, of criminal possession of a weapon in the second degree.

It is hereby ORDERED that the judgment so appealed from is unanimously reversed on the law, the indictment is dismissed, and the matter is remitted to Monroe County Court for proceedings pursuant to CPL 470.45.

Memorandum: On appeal from a judgment convicting him after a nonjury trial of criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]), defendant contends that the conviction is not supported by legally sufficient evidence. We agree. Defendant was charged along with three others with various offenses based on allegations that they were in a vehicle and possessed, inter alia, an assault weapon. We previously concluded in the appeal of a codefendant that the evidence was not legally sufficient to support his conviction based on his possession of the same weapon under the same circumstances, inasmuch as the evidence did not support a finding of constructive possession of the weapon and the statutory presumption of possession set forth in Penal Law § 265.15 (3) did not apply (*People v Willingham*, 158 AD3d 1158, – [4th Dept 2018]). Thus, for the reasons stated in our decision in the codefendant's appeal (*id.* at –), we conclude that defendant's conviction is also not supported by legally sufficient evidence. We therefore reverse the judgment and dismiss the indictment.

Defendant's remaining contentions are academic in light of our determination.

Entered: March 23, 2018

Mark W. Bennett  
Clerk of the Court