

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

**453**

**KA 16-00642**

PRESENT: CENTRA, J.P., CARNI, LINDLEY, NEMOYER, AND TROUTMAN, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

PASCUAL CRUZ, DEFENDANT-APPELLANT.

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THOMAS J. EOANNOU, BUFFALO, FOR DEFENDANT-APPELLANT.

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (DAVID A. HERATY OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Supreme Court, Erie County (Christopher J. Burns, J.), rendered August 30, 2012. The judgment convicted defendant, upon a jury verdict, of attempted murder in the second degree and criminal use of a firearm in the first 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 attempted murder in the second degree (Penal Law §§ 110.00, 125.25 [1]) and criminal use of a firearm in the first degree (§ 265.09 [1] [a]). Upon our independent review of the evidence in light of both the elements of the crimes as charged to the jury and the justification charge (*see generally People v Danielson*, 9 NY3d 342, 349 [2007]), we conclude that the verdict is not against the weight of the evidence (*see People v Gaillard*, 162 AD3d 1205, 1206-1207 [3d Dept 2018], *lv denied* 32 NY3d 1064 [2018]; *see generally People v Sanchez*, 32 NY3d 1021, 1023 [2018]; *People v Kancharla*, 23 NY3d 294, 302-303 [2014]). Contrary to defendant's further contention, Supreme Court properly denied his *Batson* applications (*see People v Linder*, - AD3d -, -, 2019 NY Slip Op 01965, \*2-3 [4th Dept 2019]; *People v Burgess*, 128 AD3d 530, 532 [1st Dept 2015], *lv denied* 26 NY3d 1086 [2015]).

Entered: April 26, 2019

Mark W. Bennett  
Clerk of the Court