

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

696

KA 18-00080

PRESENT: CENTRA, J.P., PERADOTTO, NEMOYER, CURRAN, AND DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TRASHAWN D. BELL, DEFENDANT-APPELLANT.

WILLIAM CLAUSS, ROCHESTER, FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (LEAH R. MERVINE OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Douglas A. Randall, J.), rendered November 22, 2016. The judgment convicted defendant upon a nonjury verdict of assault in the second degree.

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

Memorandum: On appeal from a judgment convicting him following a nonjury trial of assault in the second degree (Penal Law § 120.05 [7]), defendant contends that the evidence is legally insufficient to establish that he intended to cause physical injury to the victim and that the victim sustained a physical injury. Because defendant's motion for a trial order of dismissal was not " 'specifically directed' at th[ose] alleged error[s]," defendant failed to preserve his contention for our review (*People v Gray*, 86 NY2d 10, 19 [1995]). Nevertheless, " 'we necessarily review the evidence adduced as to each of the elements of the crime[] in the context of our review of defendant's challenge regarding the weight of the evidence' " (*People v Stepney*, 93 AD3d 1297, 1298 [4th Dept 2012], *lv denied* 19 NY3d 968 [2012]). Viewing the evidence in light of the elements of the crime in this nonjury trial (*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 People v Bleakley*, 69 NY2d 490, 495 [1987]). Indeed, based upon our independent review of the evidence, we conclude that a different verdict would have been unreasonable (*see People v Peters*, 90 AD3d 1507, 1508 [4th Dept 2011], *lv denied* 18 NY3d 996 [2012]; *see generally Bleakley*, 69 NY2d at 495). The video of the jail fight supports the conclusion that defendant had the requisite intent to cause physical injury by repeatedly punching the victim (*see People v Hernandez*, 192 AD3d 1528, 1531 [4th Dept 2021], *lv denied* 37 NY3d 957 [2021]; *People v Stover*, 174 AD3d 1150, 1151-1153 [3d Dept 2019], *lv denied* 34 NY3d 954 [2019]; *see also People v Lovenia V.*, 128 AD3d 537, 537 [1st Dept 2015], *lv denied* 26

NY3d 931 [2015]) and that the victim sustained a physical injury from the attack (see *People v Rudge*, 185 AD3d 1214, 1216-1217 [3d Dept 2020], *lv denied* 35 NY3d 1070 [2020]; see generally *People v Chiddick*, 8 NY3d 445, 447 [2007]).

Defendant's contention that County Court erred in failing to consider a justification defense pursuant to Penal Law § 35.15 (1) is not preserved for our review because he did not request a justification charge under that section (see *People v Hardy*, 166 AD3d 645, 647 [2d Dept 2018], *lv denied* 32 NY3d 1172 [2019]; *People v Acevedo*, 84 AD3d 1390, 1391 [2d Dept 2011], *lv denied* 17 NY3d 951 [2011]; see also *People v Brown*, 194 AD3d 1399, 1400 [4th Dept 2021]). We decline to exercise our power to review that contention as a matter of discretion in the interest of justice (see CPL 470.15 [6] [a]).

Entered: October 1, 2021

Ann Dillon Flynn
Clerk of the Court