

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

**791**

**KA 19-01433**

PRESENT: CENTRA, J.P., LINDLEY, TROUTMAN, BANNISTER, AND DEJOSEPH, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

LESTER SHAFFER, DEFENDANT-APPELLANT.

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FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE, DAVISON LAW OFFICE PLLC, CANANDAIGUA (MARY P. DAVISON OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (JESSICA N. CARBONE OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Onondaga County Court (Thomas J. Miller, J.), rendered April 29, 2019. The judgment convicted defendant upon a jury verdict of criminal possession of a controlled substance in the third degree and attempted criminal sale of a controlled substance in the third 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 criminal possession of a controlled substance in the third degree (Penal Law § 220.16 [1]) and attempted criminal sale of a controlled substance in the third degree (§§ 110.00, 220.39 [1]), for possessing and attempting to sell morphine. Defendant contends that the verdict is against the weight of the evidence. We reject that contention. In performing a weight of the evidence review, this Court essentially sits as a thirteenth juror, and we must “weigh the evidence in light of the elements of the crime[s] as charged to the other jurors” (*People v Danielson*, 9 NY3d 342, 349 [2007]). Here, viewing the evidence in light of the elements of the abovementioned crimes as charged to the jury (*see id.*), we conclude that the verdict is not against the weight of the evidence (*see generally People v Bleakley*, 69 NY2d 490, 495 [1987]). “Although a different result would not have been unreasonable, the jury was in the best position to assess the credibility of the witnesses and, on this record, it cannot be said that the jury failed to give the evidence the weight it should be accorded” (*People v Dame*, 144 AD3d 1625, 1626 [4th Dept 2016], *lv denied* 29 NY3d 948 [2017] [internal quotation marks omitted]; *see People v Ruiz*, 159 AD3d 1375, 1375 [4th Dept 2018]). Finally, contrary to defendant’s further contention, the

sentence is not unduly harsh or severe.

Entered: November 12, 2021

Ann Dillon Flynn  
Clerk of the Court