

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

1060

KA 18-01097

PRESENT: CENTRA, J.P., LINDLEY, NEMOYER, AND BANNISTER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

FRANCIS L. DISTEFANO, DEFENDANT-APPELLANT.

LEANNE LAPP, PUBLIC DEFENDER, CANANDAIGUA (GARY MULDOON OF COUNSEL),
FOR DEFENDANT-APPELLANT.

JAMES B. RITTS, DISTRICT ATTORNEY, CANANDAIGUA (V. CHRISTOPHER
EAGGLESTON OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Ontario County
(Craig J. Doran, J.), rendered January 3, 2018. The judgment
convicted defendant upon a jury 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 upon a jury
verdict of assault in the second degree (Penal Law § 120.05 [2]),
defendant contends that the evidence of intent to cause physical
injury is legally insufficient. Defendant failed to preserve that
contention for our review because his motion for a trial order of
dismissal was not " 'specifically directed' " at the alleged error
(*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 further contention that the
verdict is against the weight of the evidence (*see People v Singleton*,
192 AD3d 1536, 1536-1537 [4th Dept 2021]) and, viewing the evidence in
light of the elements of the crime as charged to the jury (*see People*
v Danielson, 9 NY3d 342, 349 [2007]), we reject that contention (*see*
generally People v Bleakley, 69 NY2d 490, 495 [1987]).

Entered: December 23, 2021

Ann Dillon Flynn
Clerk of the Court