

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

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KA 18-00656

PRESENT: WHALEN, P.J., CENTRA, PERADOTTO, NEMOYER, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

XAVIER A. LOWRY, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (WILLIAM CLAUSS OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (DEREK HARNSBERGER OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Christopher S. Ciaccio, J.), rendered August 4, 2017. The judgment convicted defendant upon a jury verdict of robbery in the first degree, robbery in the second degree and criminal possession of a weapon in the second degree (two counts).

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, inter alia, robbery in the first degree (Penal Law § 160.15 [4]). Viewing the evidence in light of the elements of the crimes as charged to the jury, we conclude that the verdict is not against the weight of the evidence (*see generally People v Danielson*, 9 NY3d 342, 348-349 [2007]). Defendant's *Batson* argument is without merit, particularly given County Court's own observations about the body language and demeanor of the prospective juror (*see People v Johnson*, 73 AD3d 578, 579 [1st Dept 2010], *lv denied* 15 NY3d 893 [2010]; *People v Carter*, 38 AD3d 1256, 1256-1257 [4th Dept 2007], *lv denied* 8 NY3d 982 [2007]). Finally, defendant's *Wade* argument "is moot inasmuch as th[e relevant] witness did not identify defendant at trial" (*People v Cormack*, 170 AD3d 1628, 1629 [4th Dept 2019], *lv denied* 34 NY3d 979 [2019]; *see CPL 470.05 [1]; People v Johnston*, 192 AD3d 1516, 1520 [4th Dept 2021], *lv denied* 37 NY3d 972 [2021]).

Entered: March 18, 2022

Ann Dillon Flynn
Clerk of the Court