

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

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KA 20-00983

PRESENT: WHALEN, P.J., LINDLEY, MONTOUR, OGDEN, AND GREENWOOD, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

WILLIE D. MCKOY, DEFENDANT-APPELLANT.
(APPEAL NO. 2.)

CAMBARERI & BRENNECK, SYRACUSE (MELISSA K. SWARTZ 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 October 16, 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: Defendant appeals from a judgment convicting him
upon a jury verdict of assault in the second degree (Penal Law
§ 120.05 [7]). Contrary to defendant's contention, the conviction is
supported by legally sufficient evidence (*see People v Bleakley*, 69
NY2d 490, 495 [1987]). Specifically, the People presented evidence
including the victim's medical records, the testimony of the victim,
and a video recording of the incident, which established that
defendant struck and kicked the victim repeatedly, leaving him with a
fractured nose, contusions on his head and chest, and a temporary loss
of vision, with minor visual impairment continuing through the time of
the trial. This evidence establishes that the victim suffered a
"[p]hysical injury" as defined in Penal Law § 10.00 (9) (*see People v
Vives*, 1 AD3d 1014, 1015 [4th Dept 2003]; *see also People v McIntosh*,
158 AD3d 1289, 1290 [4th Dept 2018], *lv denied* 31 NY3d 1015 [2018]).
Furthermore, 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 conclude that the verdict is not against the weight of the
evidence (*see generally People v Bleakley*, 69 NY2d 490, 495 [1987]).
Finally, contrary to defendant's contention, the sentence is not
unduly harsh or severe.

Entered: June 9, 2023

Ann Dillon Flynn
Clerk of the Court