

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

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KA 15-01447

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, TROUTMAN, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CARL J. FULLER, JR., DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JANET C. SOMES OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (DANIEL GROSS OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Victoria M. Argento, J.), rendered July 2, 2015. The judgment convicted defendant, upon a jury verdict, of criminal mischief in the third degree and resisting arrest.

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, criminal mischief in the third degree (Penal Law § 145.05 [2]). Defendant contends that County Court erred in ruling, as part of a *Sandoval* compromise, that the People would be allowed, if defendant chose to testify, to cross-examine him fully regarding his prior felony conviction of aggravated unlicensed operation of a motor vehicle in the first degree (Vehicle and Traffic Law § 511 [3] [a] [ii]; [b]). Initially, contrary to the People's assertion, defendant's contention is preserved for our review. Defendant expressly requested, without success on the ground now advanced on appeal, a ruling that the People not be permitted to cross-examine him regarding the prior conviction, and he "is deemed to have thereby protested the court's ultimate disposition of the matter or failure to rule . . . accordingly sufficiently to raise a question of law with respect to such disposition or failure regardless of whether any actual protest thereto was registered" (CPL 470.05 [2]; see *People v Pritchard*, 149 AD3d 1479, 1479-1480 [4th Dept 2017]; *People v Lessane*, 142 AD3d 562, 563 [2d Dept 2016]). We nevertheless conclude that defendant's contention lacks merit. "The extent to which prior convictions bear on the issue of a defendant's credibility is a question entrusted to the sound discretion of the court, reviewable only for clear abuse of discretion" (*People v Williams*, 98 AD3d 1234, 1235 [4th Dept 2012], *lv denied* 21 NY3d 947 [2013] [internal quotation marks omitted]), and there was no such abuse of

discretion here (see *People v Newland*, 83 AD3d 1202, 1203 [3d Dept 2011], *lv denied* 17 NY3d 798 [2011]; *People v Pomales*, 49 AD3d 962, 964 [3d Dept 2008], *lv denied* 10 NY3d 938 [2008]; *People v Brown*, 39 AD3d 1207, 1207 [4th Dept 2007], *lv denied* 9 NY3d 921 [2007]). Defendant's additional contention that the court should have conducted an evidentiary hearing regarding his explanation for the prior conviction is not preserved for our review (see CPL 470.05 [2]; *People v Jackson*, 221 AD2d 254, 255 [1st Dept 1995], *lv denied* 87 NY2d 974 [1996]; *People v Henderson*, 212 AD2d 1031, 1031-1032 [4th Dept 1995], *lv denied* 86 NY2d 736 [1995]), and 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]).

Finally, viewing the evidence in light of the elements of criminal mischief in the third degree as charged to the jury (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 *People v Miranda*, 119 AD3d 1421, 1421-1422 [4th Dept 2014], *lv denied* 24 NY3d 1045 [2014]; see also *People v De Chellis*, 265 AD2d 735, 735 [3d Dept 1999]; see generally *People v Bleakley*, 69 NY2d 490, 495 [1987]).