

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

146

KA 05-00426

PRESENT: SCUDDER, P.J., MARTOCHE, CENTRA, FAHEY, AND PERADOTTO, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TRAVIOUS J. SMITH, DEFENDANT-APPELLANT.

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

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (WENDY EVANS LEHMANN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Frank P. Geraci, Jr., J.), rendered August 23, 2004. The judgment convicted defendant, upon a jury verdict, of criminal possession of a weapon 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 criminal possession of a weapon in the second degree (Penal Law § 265.03 [former (2)]), defendant contends that the verdict is against the weight of the evidence. Viewing the evidence in light of the elements of the crime as charged to the jury (*see People v Danielson*, 9 NY3d 342, 349), we conclude that defendant's contention is without merit (*see generally People v Bleakley*, 69 NY2d 490, 495). We accord great deference to the jury's resolution of credibility issues (*see People v Catlin*, 41 AD3d 1199, 1200, *lv denied* 9 NY3d 873), and here "[t]he jury was entitled to credit the testimony of the witness[] who indicated that [she] observed defendant in possession of a loaded weapon and believed, under the circumstances, that defendant intended to use the weapon against another" (*People v Hunter*, 46 AD3d 1417, 1417, *lv denied* 10 NY3d 812). Finally, we conclude that the sentence is not unduly harsh or severe.

Entered: February 6, 2009

JoAnn M. Wahl
Clerk of the Court