SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Fourth Judicial Department

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KA 07-01135

PRESENT: SMITH, J.P., CENTRA, FAHEY, GREEN, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V MEMORANDUM AND ORDER

RYAN M. BOOTH, DEFENDANT-APPELLANT.

SCACCIA LAW FIRM, SYRACUSE (DANTE M. SCACCIA OF COUNSEL), FOR DEFENDANT-APPELLANT.

R. MICHAEL TANTILLO, DISTRICT ATTORNEY, CANANDAIGUA, FOR RESPONDENT.

Appeal from a judgment of the Ontario County Court (Frederick G. Reed, J.), rendered May 11, 2007. The judgment convicted defendant, upon a jury verdict, of assault in the third degree and criminal mischief in the fourth degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed, and the matter is remitted to Ontario County Court for proceedings pursuant to CPL 460.50 (5).

Memorandum: On appeal from a judgment convicting him upon a jury verdict of assault in the third degree (Penal Law § 120.00 [1]) and criminal mischief in the fourth degree (§ 145.00 [1]), defendant contends that the conviction of criminal mischief is not supported by legally sufficient evidence. By making only a general motion for a trial order of dismissal, defendant failed to preserve that contention for our review (*see People v Gray*, 86 NY2d 10, 19). In any event, that contention lacks merit. "[W]here, as here, a perpetrator damages the very property used to assault his [or her] victim, he [or she] may be presumed to intend the natural consequences of his [or her] acts and may thus be found guilty of criminal mischief" (*Matter of Carlos M.*, 32 AD3d 686, 687).

We reject the further contention of defendant that he was subjected to a de facto arrest without probable cause when he was detained by the police and that County Court erred in refusing to suppress the fruits of that alleged arrest. Contrary to the contention of defendant, he was not subjected to a de facto arrest before the showup identification by the victim, but instead was merely detained. Indeed, in conducting the showup identification, "the police diligently pursued a minimally intrusive means of investigation likely to confirm or dispel suspicion quickly, during which time it was necessary to detain the defendant" (*People v Hicks*, 68 NY2d 234,

242; *see People v Owens*, 39 AD3d 1260, 1261, *lv denied* 9 NY3d 849).

Entered: April 24, 2009

Patricia L. Morgan
Deputy Clerk of the Court