

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

876

**KA 06-00410**

PRESENT: MARTOCHE, J.P., SMITH, FAHEY, CARNI, AND GREEN, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CHRISTOPHER S. SMITH, DEFENDANT-APPELLANT.

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

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (NICOLE M. FANTIGROSSI OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Monroe County Court (Alex R. Renzi, J.), rendered December 14, 2005. The judgment convicted defendant, upon a jury verdict, of criminal possession of a weapon in the third 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 third degree (Penal Law § 265.02 [former (4)]), defendant contends that County Court erred in refusing to charge the defense of temporary innocent possession of a weapon.

We reject that contention. The evidence presented at trial established that, rather than relinquishing the gun to the police, defendant fled on foot and threw the weapon onto a roof. Defendant's conduct was "utterly at odds with any claim of innocent possession" (*People v Williams*, 50 NY2d 1043, 1045; see *People v McCoy*, 46 AD3d 1348, 1349-1350, lv denied 10 NY3d 813) and, thus, " 'there was no reasonable view of the evidence upon which the jury could have found that the defendant's possession [of the weapon] was innocent' " (*McCoy*, 46 AD3d at 1349-1350).

Entered: June 5, 2009

Patricia L. Morgan  
Clerk of the Court