

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

1100

KA 08-00152

PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, SMITH, AND CENTRA, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MAURICE PEOPLES, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (ROBERT B. HALLBORG, JR., OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (SHAWN P. HENNESSY OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Shirley Troutman, J.), rendered January 14, 2008. The judgment convicted defendant, upon a jury verdict, of murder in the second degree and criminal possession of a weapon 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 after a jury trial of, inter alia, murder in the second degree (Penal Law § 125.25 [1]). Defendant failed to preserve for our review his contention that County Court erred in failing to instruct the jury that a witness was an accomplice as a matter of law, thus requiring corroboration of the testimony of that witness (*see People v Fortino*, 61 AD3d 1410, 1411; *People v Montanez*, 57 AD3d 1366, 1367, *lv denied* 12 NY3d 857; *People v Taylor*, 57 AD3d 1518, *lv denied* 12 NY3d 822). "In any event, the failure of the court to give that instruction is of no moment, inasmuch as the testimony of the witness was in fact amply corroborated" (*Fortino*, 61 AD3d at 1411; *see People v Smith-Merced*, 50 AD3d 259, *lv denied* 10 NY3d 939; *People v White*, 81 AD2d 486, 488-489). Defendant also failed to preserve for our review his contention that he was deprived of a fair trial by prosecutorial misconduct on summation (*see CPL 470.05 [2]; People v Romero*, 7 NY3d 911; *People v Smith*, 32 AD3d 1291, 1292, *lv denied* 8 NY3d 849), and that contention is without merit in any event. Contrary to defendant's final contention, the sentence is not unduly harsh or severe.

Entered: October 2, 2009

Patricia L. Morgan
Clerk of the Court