

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

1122

KA 05-02293

PRESENT: HURLBUTT, J.P., FAHEY, PERADOTTO, GREEN, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JAMES D. BARKLEY, DEFENDANT-APPELLANT.

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

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (PATRICK H. FIERRO OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Alex R. Renzi, J.), rendered September 28, 2005. The judgment convicted defendant, upon a jury verdict, of robbery in the second degree (two counts).

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 two counts of robbery in the second degree (Penal Law § 160.10 [1], [2] [a]). We conclude that County Court "was within its discretion" at trial in discharging a sworn juror based on a medical emergency involving the juror's spouse (*People v Tisdale*, 270 AD2d 917, *lv denied* 95 NY2d 839; *see People v Aponte*, 28 AD3d 672, *lv denied* 7 NY3d 785; *People v McCullin*, 248 AD2d 277, *lv denied* 92 NY2d 928). The court made the requisite "reasonably thorough inquiry" in determining that the juror was unavailable for continued service (CPL 270.35 [2] [a]), and properly placed on the record its reasons for discharging the juror after permitting the prosecutor and defense counsel to be heard on the matter (*see* CPL 270.35 [2] [b]).

Entered: October 2, 2009

Patricia L. Morgan
Clerk of the Court