

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

1632

**KA 07-00129**

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

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

STEVEN GREEN, DEFENDANT-APPELLANT.

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TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (DREW R. DUBRIN OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (KELLY CHRISTINE WOLFORD OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Supreme Court, Monroe County (Dennis M. Kehoe, A.J.), rendered October 27, 2006. The judgment convicted defendant, upon a jury verdict, of robbery in the first 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 robbery in the first degree (Penal Law § 160.15 [4]), defendant contends that Supreme Court's charge to the jury on the issue of recent exclusive possession of stolen property, which was taken verbatim from the Criminal Jury Instructions (see CJI2d[NY] Possession: Recent, Exclusive), was improper. We reject that contention. The victim testified that defendant stole the victim's vehicle and cellular telephone at gunpoint, while defendant testified that the victim had loaned his property to defendant. Defendant was apprehended shortly after exiting the victim's vehicle and was found in possession of the victim's cellular telephone. Under those facts, the charge on recent exclusive possession of stolen property was appropriate (see *People v Howard*, 60 NY2d 999, 1001). Moreover, the charge properly allowed " 'the jury, hearing the whole charge, [to] gather from its language the correct rules which should be applied in arriving at [its] decision' " (*People v Ladd*, 89 NY2d 893, 895, quoting *People v Russell*, 266 NY 147, 153; see generally *People v Fernandez*, 286 AD2d 444, lv denied 97 NY2d 681).

Entered: December 30, 2009

Patricia L. Morgan  
Clerk of the Court