

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

896

KA 10-00720

PRESENT: SMITH, J.P., CARNI, SCONIERS, AND VALENTINO, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JASPER L. CAMPBELL, DEFENDANT-APPELLANT.

PETER J. PULLANO, ROCHESTER, FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (NANCY GILLIGAN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Stephen R. Sirkin, A.J.), rendered November 18, 2008. The judgment convicted defendant, after a nonjury trial, of 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 following a nonjury trial of criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]). Defendant's conviction arose out of the seizure by the police of a handgun from the floor of a vehicle in which defendant was a passenger. Viewing the evidence in light of the elements of the crime in this nonjury trial (*see People v Danielson*, 9 NY3d 343, 349), we conclude that "the verdict, based on the applicability of the automobile presumption . . . , is not against the weight of the evidence" (*People v Wilburn*, 50 AD3d 1617, 1618, *lv denied* 11 NY3d 742; *see People v Dunnigan*, 1 AD3d 930, 931-932, *lv denied* 1 NY3d 627; *People v Tutt*, 194 AD2d 575, 575-576, *lv denied* 82 NY2d 760; *see generally People v Bleakley*, 69 NY2d 490, 495). We further conclude that the sentence is not unduly harsh or severe.

Entered: September 27, 2013

Frances E. Cafarell
Clerk of the Court