

State of New York Court of Appeals

MEMORANDUM

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 119 SSM 25
The People &c.,
Respondent,
v.
Robert Ellis,
Appellant.

Submitted by William Kestin, for appellant.
Submitted by Nancy Fitzpatrick Talcott, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed. Defendant's claim that he was deprived of the right to a fair trial because he wore prison-issued clothing during several days of *voir dire* and trial is unpreserved for appellate review (see CPL 470.05 [2]).

In addition, the trial court did not err in denying defendant's for-cause challenge to a prospective juror based on a claim of implicit bias (see People v Colon, 71 NY2d 410, 418 [1988], cert denied 487 US 1239 [1988]; see also People v Furey, 18 NY3d 284, 287-288 [2011]; CPL 270.20 [1] [c]). Where, as here, there was no indication that the juror knew or had a professional or personal relationship with any of the People's witnesses or counsel, the juror's impartiality was not compromised merely because he was a former employee of the police department (cf. People v Branch, 46 NY2d 645, 651 [1979]) or because he "had relatives in the same profession" as the People's witnesses (Colon, 71 NY2d at 418). Nor was excusal required based on the juror's familial relationship to another prospective juror who was excused because of professional relationships with two of the People's witnesses—particularly where the seated juror confirmed multiple times on the record that he could be fair and impartial, and that he had not previously discussed the case, and would not do so if seated as a juror. In contrast, when the prosecutor asked his relative, "you think that [your professional relationships] would give you a problem sitting as a fair juror here?," the relative said "I think so" and was excused for cause.

Lastly, the record confirms that the evidence of defendant's guilt, without reference to his videotaped statement, was overwhelming. Accordingly, the Appellate Division properly rejected defendant's legal sufficiency claim (see People v Danielson, 9 NY3d 342, 349 [2007]) and properly concluded that there was no reasonable possibility that the trial court's admission of the statement affected the jury's verdict (see People v Crimmins, 36 NY2d 230, 240-241 [1975]).

* * * * *

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, in a memorandum. Chief Judge DiFiore and Judges Stein, Fahey, Garcia, Wilson and Feinman concur. Judge Rivera dissents for reasons stated in the dissenting opinion at the Appellate Division concerning preserved issues (see People v Ellis, 166 AD3d 993, 997-1006 [2nd Dept 2018] [Barros, J., dissenting]).

Decided December 19, 2019