

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Submitted - December 1, 2006

ROBERT W. SCHMIDT, J.P.
FRED T. SANTUCCI
ROBERT A. LIFSON
JOSEPH COVELLO, JJ.

2003-04619

DECISION & ORDER

The People, etc., respondent,
v Hassan Hayes, appellant.

(Ind. No. 1158/02)

George Sheinberg, Brooklyn, N.Y., for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Rhea A. Grob of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Tomei, J.), rendered May 15, 2003, convicting him of assault in the first degree, assault in the second degree, and criminal possession of a weapon in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620), we find that it was legally sufficient to establish the defendant's guilt beyond a reasonable doubt. Resolution of issues of credibility is primarily a matter to be determined by the jury, which saw and heard the witnesses, and its determination should be accorded great deference on appeal (*see People v Romero*, 7 NY3d 633, 644-645; *People v Mateo*, 2 NY3d 383, 410). Upon the exercise of our factual review power (*see CPL 470.15 [5]*), we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero, supra*).

The Supreme Court providently exercised its discretion in limiting the defendant's cross-examination of a witness concerning potential third-party culpability. The defense counsel's

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offer of proof concerning that other person's purported participation was speculative, and the evidence he sought to elicit was "too . . . conjectural to have any legitimate influence in determining the fact in issue" (*People v Martinez*, 177 AD2d 600, 601; *see People v McGlothin*, 6 AD3d 462, 463).

The defendant failed to preserve for appellate review his claim of prosecutorial misconduct (*see People v Balls*, 69 NY2d 641). In any event, there was no prosecutorial misconduct (*see People v Gray*, 284 AD2d 664, 665; *cf. People v Hill*, 5 NY3d 772, 773). Moreover, to the extent that the defendant's claim of ineffective assistance of counsel involves matter dehors the record, it may not be reviewed on direct appeal (*see People v Aguirre*, 304 AD2d 771). To the extent that the defendant's claim of ineffective assistance of counsel can be reviewed, the defense counsel provided meaningful representation (*see People v Benevento*, 91 NY2d 708; *People v Baldi*, 54 NY2d 137, 147; *People v Villacreses*, 12 AD3d 624, 626).

SCHMIDT, J.P., SANTUCCI, LIFSON and COVELLO, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court