

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

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_____AD3d_____

Submitted - September 5, 2008

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
JOSEPH COVELLO
JOHN M. LEVENTHAL, JJ.

2005-10048

DECISION & ORDER

The People, etc., respondent,
v Sherland Biscombe, appellant.

(Ind. No. 3233/04)

Lynn W. L. Fahey, New York, N.Y. (Joshua M. Levine of counsel), for appellant, and appellant pro se.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Jacqueline Linares, Keith Dolan, and Danielle Gurkin of counsel; Gregory S. d'Incelli on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Starkey, J.), rendered September 21, 2005, convicting him of murder in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant failed to preserve for appellate review his challenges to remarks made by the prosecution on summation, as he did not object to any of the challenged remarks (*see* CPL 470.05[2]; *People v Gonzalez*, 45 AD3d 696). In any event, the challenged remarks either were responsive to defense counsel's summation, were fair comment on the evidence, or constituted harmless error (*see People v Brown*, 48 AD3d 590, 591; *People v Gonzales*, 45 AD3d at 696-697).

The defendant's contention that the People failed to prove by legally sufficient evidence that he intended to cause the victim's death is also unpreserved for appellate review (*see* CPL 470.05[2]; *People v Gray*, 86 NY2d 10, 20). In any event, viewing the evidence in the light

September 30, 2008

Page 1.

PEOPLE v BISCOMBE, SHERLAND

most favorable to the prosecution (*see People v Contes*, 60 NY2d 620, 621), we find that there is a valid line of reasoning and permissible inferences which could lead a rational person to conclude that the defendant intended to cause the victim's death (*see People v Hall*, 242 AD2d 734). Moreover, 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*, 7 NY3d 633).

Viewing the totality of the evidence, the law, and the circumstances of the case, we find that the defendant was not deprived of the effective assistance of counsel (*see People v Benevento*, 91 NY2d 708; *People v Baldi*, 54 NY2d 137).

The defendant's remaining contentions, raised in his supplemental pro se brief, are unpreserved for appellate review (*see* CPL 470.05[2]), and, in any event, are without merit.

MASTRO, J.P., SKELOS, COVELLO and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court