

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

D21241
G/kmg

_____AD3d_____

Submitted - October 28, 2008

DAVID S. RITTER, J.P.
ANITA R. FLORIO
HOWARD MILLER
EDWARD D. CARNI, JJ.

2005-00680

DECISION & ORDER

The People, etc., respondent,
v John Hall, appellant.

(Ind. No. 04-200)

Del Atwell, East Hampton, N.Y., for appellant.

Thomas P. Zugibe, District Attorney, New City, N.Y. (Carrie A. Ciganek of counsel;
Ryan Sweeney on the brief), for respondent.

Appeal by the defendant from a judgment of the County Court, Rockland County (Kelly, J.), rendered December 15, 2004, convicting him of criminal possession of a weapon in the third degree and attempted petit larceny (two counts), upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's claim that the jury verdict convicting him of criminal possession of a weapon in third degree and acquitting him of attempted robbery in the first degree, attempted robbery in the second degree, and attempted assault in the second degree was repugnant or inconsistent is not preserved for appellate review, as no objection was raised before the jury was discharged (*see People v Alfaro*, 66 NY2d 985, 987; *People v Middleton*, 52 AD3d 533; *People v Graham*, 307 AD2d 935). In any event, the verdict was not repugnant or inconsistent (*see People v Carrion*, 282 AD2d 543; *People v Bebee*, 210 AD2d 243, 244).

The defendant's challenge to the legal sufficiency of the evidence also is unpreserved for appellate review (*see CPL 470.05 [2]*; *People v Padro*, 75 NY2d 820; *People v Jones*, 309 AD2d 819). In any event, viewing the evidence in the light most favorable to the prosecution (*see People*

November 25, 2008

Page 1.

PEOPLE v HALL, JOHN

v Contes, 60 NY2d 620, 621), we find that it was legally sufficient to establish the defendant's guilt beyond a reasonable doubt (*see People v Burbridge*, 51 AD3d 813, 814). In fulfilling our responsibility to conduct an independent review of the weight of the evidence (*see CPL 470.15[5]; People v Danielson*, 9 NY3d 342), we nevertheless accord great deference to the jury's opportunity to view the witnesses, hear the testimony, and observe demeanor (*see People v Mateo*, 2 NY3d 383, 410, *cert denied* 542 US 946; *People v Bleakley*, 69 NY2d 490, 495). Upon our independent review pursuant to 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).

The defendant failed to preserve for appellate review the issue of whether the court properly charged the jury on the People's burden of proving his guilt beyond a reasonable doubt (*see CPL 470.05[2]; People v Johnson*, 35 AD3d 885; *People v McAloney*, 2 AD3d 538, 539). In any event, the jury charge as a whole correctly explained the concept of reasonable doubt to the jury and "adequately apprised the jury of the proper standard of proof to apply to the evidence before it" (*People v Blackshear*, 112 AD2d 1044, 1045-1046) and, therefore, did not deprive the defendant of a fair trial (*see People v Sanchez*, 29 AD3d 608; *People v Grant*, 294 AD2d 597).

The defendant received the effective assistance of counsel (*see People v Wiggins*, 89 NY2d 872, 873; *People v Owens*, 43 AD3d 1185; *People v Sherrod*, 306 AD2d 503).

The defendant's remaining contentions are unpreserved for appellate review and, in any event, are without merit.

RITTER, J.P., FLORIO, MILLER and CARNI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court