

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

D22588
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_____AD3d_____

Submitted - February 13, 2009

ROBERT A. SPOLZINO, J.P.
MARK C. DILLON
ANITA R. FLORIO
DANIEL D. ANGIOLILLO, JJ.

2006-08283

DECISION & ORDER

The People, etc., respondent,
v Rashad Hudyih, appellant.

(Ind. No. 05-01079)

Douglas J. Martino, Mount Vernon, N.Y., for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (William C. Milaccio, Richard Longworth Hecht, and Anthony J. Servino of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Westchester County (Zambelli, J.), rendered August 1, 2006, convicting him of attempted murder 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.

Where a defendant charged with an attempted homicide relies on a defense of justification, evidence of a victim's prior acts of violence, of which the defendant had knowledge, are admissible provided that the acts were reasonably related to the crime with which the defendant was charged (*see People v Reynoso*, 73 NY2d 816, 818; *People v Miller*, 39 NY2d 543, 552; *People v Washington*, 44 AD3d 973, 973-974). Here, the trial court providently exercised its discretion in limiting admission of the evidence of the victim's prior acts of violence. Moreover, the excluded evidence would have been merely cumulative (*see People v Washington*, 44 AD3d at 974).

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The defendant's challenge to the legal sufficiency of the evidence regarding his defense of justification is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Hawkins*, 11 NY3d 484, 491-492; *see also* *People v Finger*, 95 NY2d 894, 895). In any event, 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 (*see* *People v Giammarino*, 105 AD2d 802). Further, 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 reviewing the record here, 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's contention that he was penalized for going to trial rather than accepting a plea offer is also unpreserved for appellate review (*see* *People v Evans*, 16 AD3d 595, 596) and, in any event, is without merit. The sentencing minutes indicate that the court relied upon the appropriate factors in sentencing the defendant to a higher sentence than that which was offered during plea negotiations (*see* *People v Pena*, 50 NY2d 400, *cert denied* 449 US 1087; *People v Evans*, 16 AD3d at 596). The fact that the defendant's sentence was greater than the one he would have received had he pleaded guilty does not establish his entitlement to a lesser sentence (*see* *People v Evans*, 16 AD3d at 596; *People v Hinton*, 285 AD2d 476).

The sentence imposed was not excessive (*see* *People v Suitte*, 90 AD2d 80).

SPOLZINO, J.P., DILLON, FLORIO and ANGIOLILLO, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court