

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

D23729  
Y/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - May 18, 2009

ROBERT A. SPOLZINO, J.P.  
DANIEL D. ANGIOLILLO  
CHERYL E. CHAMBERS  
L. PRISCILLA HALL, JJ.

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2006-09374

DECISION & ORDER

The People, etc., respondent,  
v Vincent Artis, appellant.

(Ind. No. 05-00552)

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De Podwin & Murphy, Nanuet, N.Y. (Phillip J. Murphy of counsel), for appellant.

Thomas P. Zugibe, District Attorney, New City, N.Y. (Argiro Kosmetatos and Elana L. Yeger of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Rockland County (Kelly, J.), rendered August 16, 2006, convicting him of assault 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 of assault in the second degree beyond a reasonable doubt (*see Penal Law* § 120.05[7]). 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 court did not err in denying the defendant's request to charge assault in the third degree (*Penal Law* § 120.00[2]) as a lesser-included offense. Although that crime is a lesser-included

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offense of the crime of which the defendant was convicted, assault in the second degree (*see People v Thomas*, 56 AD3d 1241; *see generally People v Green*, 56 NY2d 427), viewing the evidence in the light most favorable to him (*see People v Randolph*, 81 NY2d 868, 869), there was no reasonable view of the evidence here to support a finding that the defendant did not intend to cause the victim physical injury but, rather, acted recklessly and thereby created “a substantial and unjustifiable risk” that the victim would sustain a physical injury (Penal Law § 15.05[3]; *People v Joseph*, 271 AD2d 698, 699; *cf. People v Thomas*, 56 AD3d at 1241-1242).

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

The defendant’s remaining contentions, raised in points three and four of his brief, are without merit.

SPOLZINO, J.P., ANGIOLILLO, CHAMBERS and HALL, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court