

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

D28192  
Y/prt

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

Argued - June 15, 2010

WILLIAM F. MASTRO, J.P.  
ANITA R. FLORIO  
ARIEL E. BELEN  
CHERYL E. CHAMBERS, JJ.

2008-04142

DECISION & ORDER

The People, etc., respondent,  
v Ykim Anderson, appellant.

(Ind. No. 96/06)

Carol Kahn, New York, N.Y., for appellant.

William V. Grady, District Attorney, Poughkeepsie, N.Y. (Kirsten A. Rappleyea of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Dutchess County (Cohen, J.), rendered March 20, 2008, convicting him of enterprise corruption, criminal sale of a controlled substance in the third degree (two counts), criminal possession of a controlled substance in the third degree (two counts), burglary in the second degree, and criminal sale of a firearm in the third degree (two counts), upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that the evidence was legally insufficient to support his convictions of enterprise corruption, criminal sale of a firearm in the third degree and, under counts 49 and 50 of the superseding indictment, criminal sale of a controlled substance in the third degree and criminal possession of a controlled substance in the third degree. However, only the challenges to the convictions of criminal sale of a controlled substance in the third degree and criminal possession of a controlled substance in the third degree under counts 49 and 50 of the superseding indictment are preserved for appellate review (*see People v Hawkins*, 11 NY3d 484, 492). Upon the exercise of our interest of justice jurisdiction (*see* CPL 470.15[6][a]), we review the contentions which are unpreserved for appellate review, as well as those contentions which are preserved. 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 with respect to the challenged convictions beyond a reasonable doubt.

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Moreover, 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 with respect to the challenged convictions was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

Contrary to the defendant's contention, the trial court did not improvidently exercise its discretion when it permitted a witness to testify as to threats certain individuals made to him prior to trial, as there was circumstantial evidence linking the defendant to those threats (*see People v Arguinzoni*, 48 AD3d 1239, 1240; *People v Myrick*, 31 AD3d 668, 669; *People v Hendricks*, 4 AD3d 798, 799; *People v Spruill*, 299 AD2d 374, 375). "As the probative value of this testimony exceeded its prejudicial potential, failure to conduct a *Ventimiglia* hearing [*see People v Ventimiglia*, 52 NY2d 350] does not necessitate reversal" (*People v Sherman*, 156 AD2d 889, 891; *see People v Andrews*, 277 AD2d 1009, 1009-1010; *People v Pugh*, 236 AD2d 810, 812).

The defendant's contention that the admission of a "rap video" containing statements made by nontestifying codefendant Avery Green violated his right of confrontation under *Crawford v Washington* (541 US 36) and *Bruton v United States* (391 US 123) is without merit as the statements were not testimonial in nature and did not implicate the defendant (*see People v McBean*, 32 AD3d 549, 552; *People v Dickson*, 21 AD3d 646, 647; *People v Johnson*, 224 AD2d 635, 636; *People v Paulino*, 187 AD2d 736; *see also People v Jenkins*, 55 AD3d 850, 851).

The testimony of a co-conspirator was properly received into evidence under the co-conspirator exception to the hearsay rule (*see People v Caban*, 5 NY3d 143, 148; *People v Basagoitia*, 55 AD3d 619; *People v Warren*, 156 AD2d 972).

The defendant's challenge to the verdict sheet is unpreserved for appellate review (*see People v Milland*, 215 AD2d 505) and, in any event, is without merit.

The defendant's contention that the County Court should have granted him youthful offender status is unpreserved for appellate review (*see People v Scott*, 67 AD3d 1033) and, in any event, is without merit.

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

The defendant's remaining contentions are without merit.

MASTRO, J.P., FLORIO, BELEN and CHAMBERS, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court