

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

D28438
H/hu

_____AD3d_____

Argued - September 7, 2010

JOSEPH COVELLO, J.P.
FRED T. SANTUCCI
RUTH C. BALKIN
LEONARD B. AUSTIN, JJ.

2008-07275

DECISION & ORDER

The People, etc., respondent,
v Russell Argendorf, appellant.

(Ind. No. 2904/06)

Robert C. Mitchell, Riverhead, N.Y. (Kirk R. Brandt of counsel), for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Rosalind C. Gray and Marion M. Tang of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (Efman, J.), rendered July 30, 2008, convicting him of burglary in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the evidence was legally insufficient to establish his guilt of burglary in the second degree is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Hawkins*, 11 NY3d 484). In any event, viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620, 621), we find that it was legally sufficient to establish the defendant's guilt beyond a reasonable doubt. Moreover, 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, 643-644).

The County Court providently exercised its discretion in denying the defendant's request to make further inquiry of the jury after it received a note indicating that one of the jurors recognized defense counsel as the attorney who had represented friends of the juror's son. "Without

more, this type of mere ‘acquaintanceship . . . does not raise a legitimate issue as to whether [the juror] was grossly unqualified’” (*People v Cecunjanin*, 67 AD3d 1072, 1077, quoting *People v Garraway*, 9 AD3d 506, 507 [internal quotation marks omitted]; see CPL 270.35[1]; *People v Buford*, 69 NY2d 290). Moreover, the County Court gave the jury a further instruction with respect to the inquiry, and there is no indication that the issue had any impact upon the jury’s deliberations (see *People v Erving*, 55 AD3d 419; *People v Benet*, 45 AD3d 1449; *People v Devison*, 38 AD3d 203; *People v Wright*, 35 AD3d 172; *People v Young Min Kwak*, 29 AD3d 385).

Contrary to the defendant’s contention, the County Court also properly ruled that the defendant opened the door to testimony regarding his prior bad acts (see *People v Melendez*, 55 NY2d 445, 451-452; *People v Pinto*, 56 AD3d 494; *People v Swaby*, 2 AD3d 104). In any event, the evidence was admissible as background material to enable the jury to understand the defendant’s relationship with his codefendant and the complainant (see *People v Timmons*, 54 AD3d 883; *People v Farmer*, 54 AD3d 871; see generally *People v Alvino*, 71 NY2d 233).

The sentence imposed was not excessive (see *People v Suitte*, 90 AD2d 80, 83).

COVELLO, J.P., SANTUCCI, BALKIN and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court