

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

D28501
O/ct

_____AD3d_____

Submitted - September 17, 2010

FRED T. SANTUCCI, J.P.
RUTH C. BALKIN
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2008-06323

DECISION & ORDER

The People, etc., respondent,
v Eric McNeil, appellant.

(Ind. No. 2647/05)

Lynn W. L. Fahey, New York, N.Y. (Steven R. Bernhard of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Johnnette Traill, and Danielle Hartman of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Roman, J.), rendered June 6, 2008, convicting him of robbery in the first degree, robbery in the second degree (two counts), assault in the first degree, and criminal possession of a weapon in the fourth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Any prejudice that might have arisen from hearsay testimony elicited by the prosecutor was alleviated when the trial court sustained the defense objections to the challenged testimony, struck the testimony, and issued prompt curative instructions to the jury (*see People v Santiago*, 52 NY2d 865; *People v Jackson*, 59 AD3d 637; *People v Garcia*, 4 AD3d 374; *People v Reid*, 140 AD2d 639, 640-641). Moreover, since the defendant did not challenge the adequacy of the curative instructions before the trial court, such argument is unpreserved for appellate review (*see People v Santiago*, 52 NY2d at 866; *People v Reid*, 140 AD2d at 640-641; *People v Watson*, 118 AD2d 608, 609). In any event, any errors that resulted from this testimony were harmless, as there was overwhelming evidence of the defendant's guilt, and no significant probability that the error contributed to his convictions (*see People v Crimmins*, 36 NY2d 230, 241-242; *cf. People v Heman*,

October 5, 2010

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198 AD2d 434, 435).

The defendant's remaining contentions are without merit.

SANTUCCI, J.P., BALKIN, BELEN and CHAMBERS, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court