

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

D28997
G/prt

_____AD3d_____

Argued - October 26, 2010

WILLIAM F. MASTRO, J.P.
RUTH C. BALKIN
RANDALL T. ENG
L. PRISCILLA HALL, JJ.

2008-07710

DECISION & ORDER

The People, etc., respondent,
v Alexander Rivera, appellant.

(Ind. No. 2851/06)

Lynn W. L. Fahey, New York, N.Y. (Katherine A. Levine of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Ellen C. Abbot, and Danielle S. Fenn of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Erlbaum, J.), rendered July 29, 2008, convicting him of criminal possession of a weapon in the second degree, reckless endangerment in the first degree, criminal possession of a weapon in the third degree (two counts), and unlawful possession of marijuana, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant failed to preserve for appellate review his challenge to the legal sufficiency of the identification evidence (*see* CPL 470.05[2]; *People v Hawkins*, 11 NY3d 484, 493). In any event, viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620), we find that the evidence was legally sufficient to establish the defendant's identity as the shooter.

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

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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).

MASTRO, J.P., BALKIN, ENG and HALL, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court