

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

D29229
H/prt

_____AD3d_____

Submitted - November 9, 2010

ANITA R. FLORIO, J.P.
THOMAS A. DICKERSON
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2009-07269

DECISION & ORDER

The People, etc., respondent,
v Jason Curnen, appellant.

(Ind. No. 40/08)

Salvatore C. Adamo, New York, N.Y., for appellant.

Adam B. Levy, District Attorney, Carmel, N.Y. (Mary Jane MacCrae of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Putnam County (Rooney, J.), rendered June 24, 2009, convicting him of assault in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the County Court improperly denied his application to dismiss a juror pursuant to CPL 270.35 is without merit because the juror stated unequivocally that he would remain fair and impartial (*see People v Davis*, 248 AD2d 632).

The defendant's challenge to the legal sufficiency of the evidence supporting his conviction is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Hawkins*, 11 NY3d 484, 492). In any event, 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 beyond a reasonable doubt. 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

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

FLORIO, J.P., DICKERSON, BELEN 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