

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

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_____AD3d_____

Argued - December 2, 2010

JOSEPH COVELLO, J.P.
ANITA R. FLORIO
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2009-04677

DECISION & ORDER

The People, etc., respondent,
v Oneil Wallace, appellant.

(Ind. No. 10490/07)

Lynn W. L. Fahey, New York, N.Y. (Chadbourne & Parke LLP [Thomas E. Butler and Laura Rowntree], of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Solomon Neubort, and Wrobel & Schatz LLP [M. Katherine Sherman], of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Firetog, J.), rendered April 16, 2009, convicting him of manslaughter in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

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, 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).

Contrary to the defendant's contention, the Supreme Court providently exercised its discretion in admitting into evidence a recording of a 911 call placed by the victim's mother as an

December 21, 2010

Page 1.

PEOPLE v WALLACE, ONEIL

excited utterance, since the probative value of the 911 call outweighed any prejudicial effect (*see People v Carrenard*, 56 AD3d 486, 487; *cf. People v Jamerson*, 21 AD3d 428, 428).

The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80, 85-86).

COVELLO, J.P., FLORIO, ENG and CHAMBERS, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court