

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

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_____AD3d_____

Submitted - December 13, 2010

PETER B. SKELOS, J.P.
THOMAS A. DICKERSON
ARIEL E. BELEN
PLUMMER E. LOTT, JJ.

2008-09707

DECISION & ORDER

The People, etc., respondent,
v William George, appellant.

(Ind. No. 341/08)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Sholom J. Twersky, and Michael J. Balch of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (J. Goldberg, J.), rendered October 16, 2008, convicting him of robbery in the first degree and robbery in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's claim that the Supreme Court deprived him of his right to a public trial is unpreserved for appellate review (*see People v Alvarez*, 76 AD3d 1098; *People v Vatansever*, 5 AD3d 406, 407). In any event, the defendant's contention is without merit (*see People v Colon*, 71 NY2d 410, 416, *cert denied* 487 US 1239; *People v Martin*, 71 AD3d 917, *lv granted* 15 NY3d 753; *People v Gibbons*, 18 AD3d 773; *cf. Presley v Georgia*, _____US_____, 130 S Ct 721).

Contrary to the defendant's contention, the Supreme Court properly admitted into evidence the audiotape of a telephone call by the complainant to the 911 emergency number under

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the present sense impression exception to the hearsay rule. Although the call was made after the perpetrators left the complainant's store, the time delay was not sufficient to destroy the indicia of reliability upon which this hearsay exception rests (*see People v York*, 304 AD2d 681; *People v Smith*, 267 AD2d 407, 408).

SKELOS, J.P., DICKERSON, BELEN and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court