

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

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Submitted - December 17, 2010

MARK C. DILLON, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS, JJ.

2009-03819

DECISION & ORDER

The People, etc., respondent,
v Lee Woods, appellant.

(Ind. No. 6797/07)

Patrick Michael Megaro, Uniondale, N.Y., for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Diane R. Eisner of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Lott, J., at trial; Gerges, J., at sentencing), rendered April 1, 2009, convicting him of aggravated murder, attempted aggravated murder, and criminal possession of a weapon in the second degree (two counts), upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

“If upon cross-examination a witness’ testimony is assailed—either directly or inferentially—as a recent fabrication, the witness may be rehabilitated with prior consistent statements that predated the motive to falsify” (*People v McDaniel*, 81 NY2d 10, 18). During cross-examination, defense counsel inferred that the prosecution witness’s testimony was a recent fabrication because she had received certain benefits from the police. By doing so, defense counsel opened the door for the prosecution to rehabilitate the witness’s credibility with a prior consistent statement that predated the motive to fabricate (*id.* at 18; *see People v Sing Yuen Chen*, 253 AD2d 898, 899). The prior consistent statement did not need to predate all motives to fabricate (*see People v Baker*, 23 NY2d 307, 322-323; *People v Jones*, 289 AD2d 47, 47-48; *People v Kanani*, 272 AD2d

186, 187). Accordingly, the Supreme Court correctly admitted the witness's prior consistent statement.

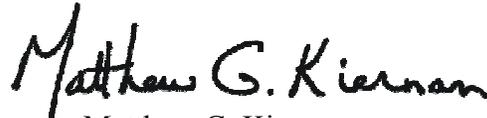
Any error in instructing the jury on the presumption contained in Penal Law § 265.15(3) was harmless, as there was overwhelming evidence of the defendant's guilt, and no significant probability that the error contributed to his convictions (*see People v Crimmins*, 36 NY2d 230, 241-242; *People v Mace*, 91 AD2d 864; *cf. People v Williams*, 146 AD2d 659, 660-661).

The defendant's challenge to the Supreme Court's supplemental instructions on the counts charging criminal possession of a weapon in the second degree is unpreserved for appellate review, and we decline to review it in the exercise of our interest of justice jurisdiction (*see People v Harrison*, 194 AD2d 627).

The defendant's remaining contention is without merit.

DILLON, J.P., BALKIN, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court