

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

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O/hu

_____AD3d_____

Argued - December 17, 2010

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

2009-03824

DECISION & ORDER

The People, etc., respondent,
v Jack Barresi, appellant.

(Ind. No. 5571/07)

Lynn W. L. Fahey, New York, N.Y. (Andrew E. Abraham of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Shulamit Rosenblum Nemeck of counsel; Claibourne Henry on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Konviser, J.), rendered April 7, 2009, convicting him of assault in the second degree and menacing 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 of assault in the second degree (*see Penal Law § 120.05[2]*). “[A]n intoxicated person can form the requisite criminal intent to commit a crime, and it is for the trier of fact to decide if the extent of the intoxication acted to negate the element of intent” (*People v Flores*, 40 AD3d 876, 877; *see People v LaGuerre*, 29 AD3d 820, 822; *People v Mannarino*, 35 AD3d 631; *People v Gonzalez*, 6 AD3d 457). The defendant's intent to cause physical injury (*see Penal Law § 10.00[9]*) may be inferred from his conduct and the surrounding circumstances (*see People v Bracey*, 41 NY2d 296, 303; *People v Spurgeon*, 63 AD3d 863, 864; *People v Gumbs*, 58 AD3d 641; *People v Mei Ying Wang*, 33 AD3d 820, 821). Moreover, in fulfilling our responsibility to conduct an independent review of

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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 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).

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

ENTER:


Matthew G. Kiernan
Clerk of the Court