

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

D29819
O/kmb

_____AD3d_____

Submitted - January 6, 2011

JOSEPH COVELLO, J.P.
THOMAS A. DICKERSON
L. PRISCILLA HALL
PLUMMER E. LOTT, JJ.

2009-01931

DECISION & ORDER

The People, etc., respondent,
v Perry Byrd, appellant.

(Ind. No. 9149/07)

Lynn W. L. Fahey, New York, N.Y. (William Kastin of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Jodi L. Mandel, and Judith Aarons of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Ingram, J.), rendered February 6, 2009, convicting him of assault in the first degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the evidence was legally insufficient to support his conviction is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Hawkins*, 11 NY3d 484). In any event, viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620, 621), 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 People v Danielson*, 9 NY3d 342; CPL 470.15[5]), we nevertheless accord great deference to the fact-finder'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).

January 25, 2011

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The defendant's contention that he was deprived of a fair trial by certain remarks made by the prosecutor during summation is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Tevaha*, 84 NY2d 879, 881; *People v Williams*, 46 NY2d 1070, 1071; *People v Utley*, 45 NY2d 908, 910) and, in any event, without merit (*see People v Hendrix*, 60 AD3d 1081, 1082-1083).

COVELLO, J.P., DICKERSON, HALL and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court