

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

D29835
Y/hu/kmb

_____AD3d_____

Argued - January 7, 2011

WILLIAM F. MASTRO, J.P.
CHERYL E. CHAMBERS
SHERI S. ROMAN
JEFFREY A. COHEN, JJ.

2007-05308

DECISION & ORDER

The People, etc., respondent,
v Hakim Edwards, appellant.

(Ind. No. 9263/05)

Lynn W. L. Fahey, New York, N.Y. (Erin R. Collins of counsel), for appellant, and
appellant pro se.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Thomas S.
Burka, and Jill Oziemblewski of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County
(Carroll, J.), rendered May 17, 2007, convicting him of criminal possession of a weapon in the third
degree upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after
a hearing (Gary, J.), of that branch of the defendant's omnibus motion which was to suppress physical
evidence.

ORDERED that the judgment is affirmed.

The suppression court correctly determined that the police had probable cause to
stop the livery cab in question (*see People v Robinson*, 97 NY2d 341; *People v Graham*, 54 AD3d
1056; *People v Guzman*, 153 AD2d 320). Since the stop was lawful, and because a gun was
observed in plain view on the floor of the back of the cab where the defendant was seated, the gun
was lawfully seized (*see Wong Sun v United States*, 371 US 471, 488).

The trial court properly admitted into evidence, at the defendants' trial, testimony

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by the livery driver that, on the day of the defendant's arrest, the driver did not have discussions with any of the passengers who rode in the cab before the defendant did, about a gun in the back seat area. Despite the defendant's objection, such testimony did not constitute hearsay as there was no "out-of-court statement which [was] offered to prove the truth of its content" (*People v Gibian*, 76 AD3d 583, 596 citing *Prince*, Richardson on Evidence § 8-101 [Farrell 11th ed]; see *People v Huertas*, 75 NY2d 487, 491-492; *People v Kass*, 59 AD3d 77, 86-87).

The defendant's constitutional challenge to the persistent violent felony offender statute is unpreserved for appellate review (see CPL 470.05[2]), and, in any event, is without merit (see *People v Leon*, 10 NY3d 122, cert denied 554 US 926; *People v Mendez*, 71 AD3d 696).

The defendant's remaining contentions, including those raised in his pro se supplemental brief, are without merit.

MASTRO, J.P., CHAMBERS, ROMAN and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court