

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

D29895  
O/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - January 14, 2011

DANIEL D. ANGIOLILLO, J.P.  
L. PRISCILLA HALL  
SHERI S. ROMAN  
JEFFREY A. COHEN, JJ.

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2008-10592

DECISION & ORDER

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

(Ind. No. 8972/06)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Keith Dolan of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Dowling, J.), rendered November 5, 2008, convicting him of attempted assault in the first degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant was not deprived of a fair trial by the Supreme Court's denial of his request for a missing witness charge (*see People v Gonzalez*, 68 NY2d 424, 427-428; *People v Vela*, 11 AD3d 716). In any event, even if the Supreme Court erred in denying the defendant's request for a missing witness charge, any error was harmless, as there was overwhelming evidence of the defendant's guilt and no significant probability that the error contributed to his conviction (*see People v Crimmins*, 36 NY2d 230, 241-242).

ANGIOLILLO, J.P., HALL, ROMAN and COHEN, JJ., concur.

ENTER:



Matthew G. Kiernan  
Clerk of the Court

February 1, 2011

PEOPLE v SMALLS, WILLIAM