

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

D30361
G/kmb

_____AD3d_____

Argued - February 17, 2011

JOSEPH COVELLO, J.P.
ARIEL E. BELEN
L. PRISCILLA HALL
JEFFREY A. COHEN, JJ.

2010-03636

DECISION & ORDER

The People, etc., respondent,
v Rafael Servellon, appellant.

(Ind. No. 2186/09)

Beverly Van Ness, New York, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Tammy J. Smiley and Cristin N. Connell of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Nassau County (Grella, J.), rendered April 14, 2010, convicting him of criminal mischief in the third degree and assault in the third degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that the evidence of “physical injury,” an element of the crime of assault in the third degree (Penal Law § 120.00), was legally insufficient. Viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620), we find that the evidence was legally sufficient to establish that the complainant suffered either “substantial pain” or “impairment of physical condition” as a result of the altercation with the defendant (Penal Law § 10.00[9]; *see* Penal Law § 120.00; *Matter of Philip A.*, 49 NY2d 198, 200). Moreover, upon our independent review pursuant to CPL 470.15(5), we are satisfied that the verdict of guilt with respect

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to assault in the third degree and criminal mischief in the third degree was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

COVELLO, J.P., BELEN, HALL and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court