

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

D30531
H/prt

_____AD3d_____

Argued - March 3, 2011

MARK C. DILLON, J.P.
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS
LEONARD B. AUSTIN, JJ.

2009-04684

DECISION & ORDER

The People, etc., respondent,
v Cedric Miller, appellant.

(Ind. No. 7284/07)

Lynn W. L. Fahey, New York, N.Y. (De Nice Powell of counsel), for appellant.

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

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Guzman, J.), rendered April 14, 2009, convicting him of criminal possession of a weapon in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

As correctly conceded by the People, the trial court erred in failing to grant the defendant's request to instruct the jury that an eyewitness is not obligated to come forward to law enforcement officials upon learning of the defendant's arrest (*see People v Dawson*, 50 NY2d 311; *People v Bryan*, 55 AD3d 921; *People v Paasewe*, 276 AD2d 807; *People v Casseus*, 199 AD2d 525; *People v Allen*, 177 AD2d 700; *People v Reed*, 83 AD2d 645). However, under the circumstances, the error was harmless (*see People v Crimmins*, 36 NY2d 230; *People v Archie*, 200 AD2d 676; *People v Davis*, 172 AD2d 553).

The defendant was not deprived of his right to a public trial (*see* US Const, 6th Amend; Civil Rights Law § 12; Judiciary Law § 4; *People v Jones*, 96 NY2d 213). Although the defendant initially objected to the exclusion of his girlfriend during an undercover officer's testimony,

March 22, 2011

Page 1.

PEOPLE v MILLER, CEDRIC

defense counsel subsequently withdrew this objection in the defendant's presence. Accordingly, the defendant waived his right to have his girlfriend present during this portion of the trial (*see People v Moody*, 300 AD2d 510; *People v Roque*, 291 AD2d 417).

The defendant was afforded meaningful representation (*see People v Caban*, 5 NY3d 143, 152; *People v Benevento*, 91 NY2d 708; *People v Rand*, 58 AD3d 758).

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

ENTER:


Matthew G. Kiernan
Clerk of the Court