

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

D30591
W/kmb

_____AD3d_____

Submitted - February 18, 2011

REINALDO E. RIVERA, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
PLUMMER E. LOTT, JJ.

2008-01345

DECISION & ORDER

The People, etc., respondent,
v Luis Lopez, appellant.

(Ind. No. 1093/07)

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

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,
Johnnette Traill, and Danielle Hartman of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Hollie, J.), rendered January 22, 2008, convicting him of assault in the third degree and criminal contempt in the first degree (two counts), upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant failed to preserve for appellate review his contention that the Supreme Court deprived him of both a fair trial and his Sixth Amendment right to present a defense by precluding defense counsel from questioning a certain prosecution witness as to whether the defendant smelled of alcohol or appeared intoxicated on the night of the subject altercation (*see* CPL 470.05[2]; *People v Haddock*, 79 AD3d 1148; *People v Bernardez*, 63 AD3d 1174; *People v Sims*, 57 AD3d 1106, 1109), and we decline to reach it in the exercise of our interest of justice jurisdiction. Furthermore, under the circumstances, defense counsel's failure to specifically object when the

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Supreme Court sustained the prosecutor's objections to such questions did not deprive the defendant of effective assistance of counsel (*see People v Baldi*, 54 NY2d 137, 147).

RIVERA, J.P., DICKERSON, ENG and LOTT, JJ., concur.

ENTER: z


Matthew G. Kiernan
Clerk of the Court