

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

D30598
O/kmb

_____AD3d_____

Submitted - March 7, 2011

REINALDO E. RIVERA, J.P.
DANIEL D. ANGIOLILLO
RANDALL T. ENG
SANDRA L. SGROI, JJ.

2008-04536

DECISION & ORDER

The People, etc., respondent,
v Anthony Woods, appellant.

(Ind. No. 3564/06)

Lynn W. L. Fahey, New York, N.Y. (Sarah J. Berger of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Diane R. Eisner, and Catherine Dagonese of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Ingram, J.), rendered April 22, 2008, convicting him of burglary in the first degree, assault in the third degree (three counts), and reckless endangerment in the second degree (two counts), upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant was charged with multiple counts of, inter alia, burglary in the first degree, assault in the third degree, criminal possession of a weapon, and reckless endangerment in the second degree. These charges stemmed from a number of distinct incidents which occurred in the complainant's apartment while the complainant and the defendant were engaged in a relationship. The defendant contends, inter alia, that the verdicts of guilt for the crimes of burglary in the first degree and reckless endangerment were against the weight of the evidence in light of the jury's verdict acquitting the defendant of the weapons possession charges.

In fulfilling our responsibility to conduct an independent review of the weight of the evidence (*see* CPL 470.15[5]; *People v Danielson*, 9 NY3d 342), we nevertheless accord great

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deference to the fact finder's opportunity to view the witnesses, hear the testimony, and observe demeanor (see *People v Mateo*, 2 NY3d 383, 410, *cert denied* 542 US 946; *People v Bleakley*, 69 NY2d 490, 495). Moreover, under the circumstances of this case, as part of our review of the weight of the evidence, we decline to "assume the basis for any implied inconsistencies in mixed jury verdicts" (*People v Rayam*, 94 NY2d 557, 563; see *People v Houston*, 73 AD3d 1081, 1082; *People v Martinez*, 63 AD3d 859, 860; see also *People v Ross*, 62 AD3d 619, 619; *People v Freeman*, 298 AD2d 311, 311-312). Upon reviewing the record here, we are satisfied that the verdict of guilt was not against the weight of the evidence (see *People v Romero*, 7 NY3d 633).

The defendant's contention that the evidence was legally insufficient to support his convictions of assault in the third degree under counts 1, 9, and 10 of the indictment is unpreserved for appellate review and, in any event, without merit (see generally *People v Contes*, 60 NY2d 620).

The defendant's remaining contentions are without merit.

RIVERA, J.P., ANGIOLILLO, ENG and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court