

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

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_____AD3d_____

Submitted - March 10, 2011

ANITA R. FLORIO, J.P.
THOMAS A. DICKERSON
JOHN M. LEVENTHAL
ARIEL E. BELEN, JJ.

2008-04702

DECISION & ORDER

The People, etc., respondent,
v Stephen Noll, appellant.

(Ind. No. 2621-00)

Robert C. Mitchell, Riverhead, N.Y. (Kirk R. Brandt of counsel), for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Guy Arcidiacono of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (Hudson, J.), rendered April 13, 2007, convicting him of robbery in the first degree, attempted robbery in the first degree, burglary in the third degree, and resisting arrest, after a nonjury trial, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that the prosecution failed to prove his guilt by legally sufficient evidence because he was not responsible by reason of mental disease or defect (*see* Penal Law § 40.15). This contention is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Ginsberg*, 36 AD3d 627, 628). In any event, viewing the evidence in the light most favorable to the prosecution (*see* *People v Contes*, 60 NY2d 620), we find that it was legally sufficient to establish the defendant's guilt beyond a reasonable doubt (*see* *People v Trojan*, 73 AD3d 818; *People v Ginsberg*, 36 AD3d at 628).

Moreover, 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

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accord great 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). 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 People offered expert testimony to rebut the testimony of the defense expert that, due to a mental disease or defect, the defendant lacked substantial capacity to know or appreciate the nature and consequences of his conduct, or that his conduct was wrong when he committed the crimes (*see People v Trojan*, 73 AD3d at 819; *People v Hill*, 276 AD2d 716; *People v Rahman*, 202 AD2d 696).

FLORIO, J.P., DICKERSON, LEVENTHAL and BELEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court