

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

D30874  
C/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - March 28, 2011

DANIEL D. ANGIOLILLO, J.P.  
RUTH C. BALKIN  
JOHN M. LEVENTHAL  
SANDRA L. SGROI, JJ.

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2009-03845

DECISION & ORDER

The People, etc., respondent,  
v Kevin Townsend, appellant.

(Ind. No. 2159/07)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Keith Dolan,  
and Marie John-Drigo of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Marrus, J.), rendered April 7, 2009, convicting him of murder in the second degree and criminal possession of a weapon in the third degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the evidence was legally insufficient to support his conviction of murder in the second degree is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Hawkins*, 11 NY3d 484, 491-492). In any event, viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620, 621), we find that it was legally sufficient to establish the defendant's guilt of that crime, including the element of intent, beyond a reasonable doubt (*see People v Bryant*, 36 AD3d 517, 517, *People v Smith*, 35 AD3d 635; *People v Francis*, 209 AD2d 539, 540). Additionally, 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 deference to the jury's opportunity to view the witnesses, hear the testimony, and observe demeanor (*see People v Bleakley*, 69 NY2d 490, 495). Upon reviewing the record here, we are satisfied that the verdict of guilt as to the conviction of murder in the second

April 19, 2011

Page 1.

PEOPLE v TOWNSEND, KEVIN

degree was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

The defendant's contention that the trial court's charge to the jury on the lesser-included offense of manslaughter in the first degree was insufficient is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Hawkins*, 11 NY3d at 491-492; *People v Shakur*, 249 AD2d 424, 425). In any event, the charge was sufficient, as it adequately apprised the jury of the applicable law (*see People v Calderon*, 182 AD2d 770).

ANGIOLILLO, J.P., BALKIN, LEVENTHAL and SGROI, 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