

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

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Submitted - March 29, 2011

MARK C. DILLON, J.P.
ANITA R. FLORIO
CHERYL E. CHAMBERS
ROBERT J. MILLER, JJ.

2009-10943

DECISION & ORDER

The People, etc., respondent,
v Michael Johnson, appellant.

(Ind. No. 3171/06)

Lynn W. L. Fahey, New York, N.Y. (Jessica M. McNamara of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Ellen C. Abbot, and Gregory H. Shill of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Braun, J.), rendered November 18, 2009, convicting him of criminal possession of a weapon in the third degree (two counts), after a nonjury trial, and imposing sentence.

ORDERED that the judgment is affirmed.

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 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 with respect to two counts of criminal possession of a weapon in the third degree was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633; *People v Tutt*, 194 AD2d 575, 575-576; *People v Delvas*, 181 AD2d 740, 740). A police officer, who had pulled the defendant's vehicle over for failing to use a turn signal, retrieved a loaded firearm from inside the vehicle, after he observed it protruding from a bag located on the front passenger-side floor. Under the circumstances of this

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case, the fact-finder properly invoked the “automobile presumption” pursuant to Penal Law § 265.15(3) in finding the defendant guilty of two counts of criminal possession of a weapon in the third degree.

DILLON, J.P., FLORIO, CHAMBERS and MILLER, 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