

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

D31443
W/nl

_____AD3d_____

Submitted - May 5, 2011

JOSEPH COVELLO, J.P.
CHERYL E. CHAMBERS
PLUMMER E. LOTT
ROBERT J. MILLER, JJ.

2009-00815

DECISION & ORDER

The People, etc., respondent,
v Orlando Masaguilar, appellant.

(Index No. 705/08)

Marianne Karas, Armonk, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Andrea M. DiGregorio of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Nassau County (Sullivan, J.), rendered January 9, 2009, convicting him of attempted murder in the second degree, assault in the first degree, menacing in the second degree, criminal possession of a weapon in the second degree, criminal use of a firearm in the first degree, and criminal possession of a controlled substance in the fourth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Although the Supreme Court should have granted the defendant's motion to sever the count charging criminal possession of a controlled substance in the fourth degree from the remaining counts (*see* CPL 200.20[2][a], [b]; *People v Singson*, 40 AD3d 1015, 1016; *People v Communiello*, 180 AD2d 809, 809-810; *People v Connors*, 83 AD2d 640, 640-641), the error was harmless, as the evidence of the defendant's guilt was overwhelming, and there is no significant probability that the error contributed to the defendant's convictions (*see People v Crimmins*, 36 NY2d 230, 241-242; *People v Singson*, 40 AD3d at 1016).

The defendant's challenges to the alleged instances of prosecutorial misconduct at trial

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and in summation are unpreserved for appellate review (*see People v Muniz*, 44 AD3d 1074; *People v Jenkins*, 38 AD3d 566, 567). In any event, although some of the prosecutor's questions and comments on cross-examination of the defendant and in summation were improper, they constituted harmless error (*see People v Crimmins*, 36 NY2d at 241-242; *People v Ortiz*, 46 AD3d 580, 581).

The defendant was not deprived of the effective assistance of counsel. Considering the totality of the evidence, the law, and the circumstances of the case, trial counsel provided meaningful representation (*see People v Benevento*, 91 NY2d 708, 712).

COVELLO, J.P., CHAMBERS, LOTT and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court