

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

D31462
G/prt

_____AD3d_____

Submitted - May 5, 2011

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

2004-00129

DECISION & ORDER

The People, etc., respondent,
v DeJuan Brown, appellant.

(Ind. No. 3069/02)

Gail Gray, New York, N.Y., for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Amy Appelbaum, and Melissa J. Feldman of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (D'Emic, J.), rendered November 25, 2003, convicting him of manslaughter in the first degree, assault in the first degree, and criminal possession of a weapon in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that the verdict was against the weight of the evidence. 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 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 defendant's challenges to certain remarks made by the prosecutor during summation are unpreserved for appellate review, as the defendant failed to object to the challenged

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remarks at the trial (*see* CPL 470.05[2]; *People v James*, 72 AD3d 844, 845; *People v Wilson*, 71 AD3d 799, 800). In any event, the challenged remarks were fair comment on the evidence and the reasonable inferences to be drawn therefrom, permissible rhetorical comment, or responsive to defense counsel's summation (*see People v Ashwal*, 39 NY2d 105, 109-110; *People v Ariza*, 77 AD3d 844, 846; *People v Torres*, 72 AD3d 709).

The defendant's remaining contention is unpreserved for appellate review and, in any event, is without merit.

COVELLO, J.P., CHAMBERS, LOTT 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