

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

D31496  
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Submitted - May 5, 2011

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

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2010-00700

DECISION & ORDER

The People, etc., respondent,  
v Barcel McDaniel, appellant.

(Ind. No. 2687/08)

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Thomas T. Keating, White Plains, N.Y. (Joseph M. Angiolillo of counsel), for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Robert A. Schwartz, Ilisa T. Fleischer, and Richard R. Martell of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Nassau County (Jaeger, J.), rendered January 13, 2010, convicting him of assault in the second degree and criminal possession of a weapon in the fourth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the People failed to disprove the defense of justification and failed to establish his guilt of assault in the second degree by legally sufficient evidence is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Hawkins*, 11 NY3d 484, 492; *People v Gray*, 86 NY2d 10, 19; *People v Walker*, 78 AD3d 1082, 1083; *People v Battle*, 73 AD3d 939, 940; *People v Holmes*, 37 AD3d 1042). In any event, the evidence, when viewed in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620, 621), was legally sufficient to disprove the justification defense and to establish the defendant's guilt of assault in the second degree. Moreover, upon our independent review of the evidence pursuant to CPL 470.15(5), we are satisfied that the jury's rejection of the justification defense and the verdict of guilt on the count of assault in the second degree was not against the weight of the evidence (*see People v*

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*Romero*, 7 NY3d 633).

The trial court providently exercised its discretion in permitting an in-court demonstration during the People's case for the limited purpose of illustrating the positions of the participants in the subject altercation (*see People v Barnes*, 80 NY2d 867, 868), and by denying the defendant's request for an in-court demonstration "to show exactly where the hands" of the participants were during the altercation (*see People v Acevedo*, 40 NY2d 701, 704; *People v Caballero*, 34 AD3d 690, 691).

The defendant's remaining contentions are unpreserved for appellate review (*see CPL 470.05[2]*; *People v Alfaro*, 66 NY2d 985, 987; *People v Ariza*, 77 AD3d 844, 845; *People v Battle*, 73 AD2d at 940; *People v Floyd*, 34 AD3d 494, 494-495; *People v Cruz*, 175 AD2d 212; *People v Ramos*, 168 AD2d 518) and, in any event, are without merit.

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

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court