

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

D32111  
G/prt

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Submitted - June 20, 2011

MARK C. DILLON, J.P.  
RANDALL T. ENG  
SANDRA L. SGROI  
ROBERT J. MILLER, JJ.

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2009-11014  
2010-00458

DECISION & ORDER

The People, etc., respondent,  
v Marvin McNeil, appellant.

(Ind. No. 1850/08)

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Alan Katz, Garden City, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Douglas Noll and Andrew Fukuda of counsel), for respondent.

Appeals by the defendant from (1) a judgment of the Supreme Court, Nassau County (Robbins, J.), rendered October 27, 2009, convicting him of robbery in the second degree and robbery in the third degree, upon a jury verdict, and imposing sentence, and (2) a resentence of the same court imposed November 23, 2009.

ORDERED that the judgment and the resentence are affirmed.

Video footage from a security camera located in a Modell's Sporting Goods store in Freeport showed the defendant and his accomplice, Mattie, shoplifting shoes from the store on July 2, 2008. A security guard intercepted them on their way out, held the door closed, and told them they could not leave and had to wait for the manager. The defendant "rammed" his body into the guard and forced the door open. As he went through the door, the defendant deliberately jammed his thumbs into the left side of the guard's rib cage. Mattie "rush[ed]" into the guard on her way out of the store. The defendant and Mattie then ran away, in different directions.

On August 13, 2008, the pair shoplifted items from a National Wholesale Liquidators

July 26, 2011

Page 1.

store located in West Hempstead. When a security guard intercepted them on their way out, the defendant responded by grabbing the guard's arms and shoving him into a wall. This time, two other security guards assisted to tackle the defendant, who was arrested by police a short time later. Mattie ran away.

The jury convicted the defendant of robbery in the second degree for the Modell's incident and robbery in the third degree for the National Wholesale Liquidators incident. The defendant appeals.

Viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620), we find that it was legally sufficient to establish the defendant's guilt beyond a reasonable doubt. Contrary to the defendant's contentions, the People established that the defendant used force in both robberies, and that he was aided by Mattie in the robbery of the Modell's Sporting Goods store (*see People v Williams*, 69 AD3d 662; *People v Carr-El*, 287 AD2d 731, 731-732, *affd* 99 NY2d 546; *People v Green*, 277 AD2d 82, 83; *cf. People v Wright*, 189 AD2d 612, 612-613).

Moreover, 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).

DILLON, J.P., ENG, SGROI 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