

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

D32130
O/prt

_____AD3d_____

Argued - June 21, 2011

WILLIAM F. MASTRO, J.P.
CHERYL E. CHAMBERS
LEONARD B. AUSTIN
JEFFREY A. COHEN, JJ.

2008-11726

DECISION & ORDER

The People, etc., respondent,
v Wilfredo Aviles, appellant.

(Ind. No. 8925/06)

Lynn W. L. Fahey, New York, N.Y. (Erin R. Collins of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Jodi L. Mandel, and Adam M. Koelsch of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Marrus, J.), rendered December 11, 2008, convicting him of murder in the second degree (two counts), upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant failed to preserve for appellate review his challenge to the legal sufficiency of the identification evidence (*see* CPL 470.05[2]; *People v Hawkins*, 11 NY3d 484, 493). In any event, 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 identity as the shooter.

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

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guilt was not against the weight of the evidence (*see People v Gomez*, 46 AD3d 836; *People v Lobo*, 6 AD3d 550; *People v Dupont*, 283 AD2d 587; *People v Pinder*, 269 AD2d 547).

The defendant's contention that the sentencing court considered improper factors in imposing sentence is unpreserved for appellate review (*see CPL 470.05[2]*; *People v Garson*, 69 AD3d 650, 652; *People v Campbell*, 54 AD3d 959, 960; *People v Santos-Mispas*, 38 AD3d 923). In any event, the claim is without merit (*see People v Garson*, 69 AD3d at 652; *People v Campbell*, 54 AD3d at 960; *People v Santos-Mispas*, 38 AD3d 923). The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

MASTRO, J.P., CHAMBERS, AUSTIN and COHEN, 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