

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

D32165  
W/kmb

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - April 29, 2011

WILLIAM F. MASTRO, J.P.  
L. PRISCILLA HALL  
PLUMMER E. LOTT  
JEFFREY A. COHEN, JJ.

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2008-04934

DECISION & ORDER

The People, etc., respondent,  
v Rasheen Sweeney, appellant.

(Ind. No. 156/05)

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Lynn W. L. Fahey, New York, N.Y. (De Nice Powell of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,  
Nicoletta J. Caferri, and Ushir Pandit of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Lasak, J.), rendered May 21, 2008, convicting him of murder in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is reversed, on the facts, the indictment is dismissed, and the matter is remitted to the Supreme Court, Queens County, for the purpose of entering an order in its discretion pursuant to CPL 160.50.

The defendant and codefendant Vishnudatt Nisthalal were both convicted, after a joint jury trial, of murder in the second degree in connection with the shooting death of victim Yamile Puentes during the early morning hours of January 18, 1993, in the vicinity of the intersection of 37th Road and 77th Street in Jackson Heights, Queens. For the reasons stated at length in our decision on the codefendant's appeal (*see People v Nisthalal*, \_\_\_\_\_AD3d\_\_\_\_\_ [decided herewith]), we agree with the defendant that his conviction was against the weight of the evidence (*see People v Fortunato*, 70 AD3d 851; *People v Zephyrin*, 52 AD3d 543; *People v Giocastro*, 210 AD2d 254). We note in this regard that the admission into evidence at trial of the defendant's largely exculpatory statement to the police does not warrant a contrary result.

August 23, 2011

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In view of the foregoing, we have no occasion to consider the defendant's remaining contentions.

MASTRO, J.P., HALL, LOTT and COHEN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court