

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

D32331
Y/kmb

_____AD3d_____

Argued - September 8, 2011

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
JOHN M. LEVENTHAL
SHERI S. ROMAN, JJ.

2009-00934

DECISION & ORDER

The People, etc., respondent,
v Armando Lebron, appellant.

(Ind. No. 207/06)

Lynn W. L. Fahey, New York, N.Y. (Paul Skip Laisure and Sarah J. Berger of counsel), for appellant.

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

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Buchter, J.), rendered January 12, 2009, convicting him of murder in the second degree (two counts) 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 Supreme Court erred in admitting into evidence testimony from the People's expert witness regarding the probability of a coincidental match of a partial DNA profile obtained from the victim's fingernails with a DNA profile in the local population is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Peele*, 73 AD3d 1219, 1221) and, in any event, is without merit. Where, as here, population studies are presented to estimate the probability of a coincidental DNA match, a defendant's challenges to the population studies "go not to admissibility, but to the weight of the evidence, which should be left to the trier of fact" (*People v Wesley*, 83 NY2d 417, 427; *see People v Parker*, 304 AD2d 146, 159; *People v Knight*, 280 AD2d 937, 938; *People v Hall*, 266 AD2d 160, 161; *People v Vega*, 225 AD2d 890, 893).

September 27, 2011

Page 1.

PEOPLE v LEBRON, ARMANDO

The defendant's claim that he was deprived of the effective assistance of counsel under both the Federal and the State constitutions is without merit. The defendant failed to "demonstrate the absence of strategic or other legitimate explanations' for counsel's allegedly deficient conduct" (*People v Caban*, 5 NY3d 143, 152, quoting *People v Rivera*, 71 NY2d 705, 709). Viewing the record as a whole, we conclude that counsel provided effective representation (*see Strickland v Washington*, 466 US 668, 694; *People v Baldi*, 54 NY2d 137, 146-147; *People v Monsuri*, 83 AD3d 870, *lv denied* 17 NY3d 808).

The defendant's remaining contention does not require reversal.

RIVERA, J.P., FLORIO, LEVENTHAL and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court