

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

D32483
N/kmb

_____AD3d_____

Submitted - September 22, 2011

DANIEL D. ANGIOLILLO, J.P.
THOMAS A. DICKERSON
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2009-04143

DECISION & ORDER

The People, etc., respondent,
v Daniel A. Correa, appellant.

(Ind. No. 08-00427)

Janet A. Gandolfo, Sleepy Hollow, N.Y., for appellant.

Francis D. Phillips II, District Attorney, Goshen, N.Y. (Andrew R. Kass of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Orange County (De Rosa, J.), rendered March 31, 2009, convicting him of murder in the second degree, criminal possession of a weapon in the second degree (two counts), and tampering with physical evidence, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

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).

There is no merit to the defendant's contention that the County Court should have instructed the jury that a certain prosecution witness was an accomplice as a matter of law. "[I]f the undisputed evidence establishes that a witness is an accomplice, the jury must be so instructed

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but, if different inferences may reasonably be drawn from the proof regarding complicity . . . the question should be left to the jury for its determination” (*People v Sweet*, 78 NY2d 263, 266, quoting *People v Basch*, 36 NY2d 154, 157). Here, since the evidence in this regard was susceptible of more than one interpretation, the County Court properly instructed the jury to determine whether the witness was an accomplice (see *People v Besser*, 96 NY2d 136, 147; *People v Cardona*, 17 AD3d 692, 693; *People v Cirigliano*, 15 AD3d 672, 673).

The defendant’s remaining contentions are without merit.

ANGIOLILLO, J.P., DICKERSON, CHAMBERS and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court