

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

D32559  
Y/kmb

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Argued - September 23, 2011

MARK C. DILLON, J.P.  
ARIEL E. BELEN  
SHERI S. ROMAN  
ROBERT J. MILLER, JJ.

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2008-09057

DECISION & ORDER

The People, etc., respondent,  
v Vincent Bouknight, appellant.

(Ind. No. 5279/06)

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Lynn W. L. Fahey, New York, N.Y. (Erica Horwitz of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Diane R. Eisner of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Lott, J.), rendered September 24, 2008, convicting him of murder in the second degree, criminal possession of a weapon in the second degree, and criminal possession of a weapon in the third degree, upon a jury verdict, and sentencing him to an indeterminate term of 25 years to life imprisonment on the count of murder in the second degree, a determinate term of 10 years imprisonment on the count of criminal possession of a weapon in the second degree to be followed by a period of postrelease supervision, and a determinate term of seven years imprisonment on the count of criminal possession of a weapon in the third degree to be followed by a period of postrelease supervision, with all sentences to run concurrently.

ORDERED that the judgment is modified, on the law, by vacating the sentence imposed on the conviction of criminal possession of a weapon in the third degree and the related period of postrelease supervision; as so modified, the judgment is affirmed, and the matter is remitted to the Supreme Court, Kings County, for resentencing on that count.

The defendant's contention that the Supreme Court erred in permitting various prosecution witnesses to testify regarding his past actions with respect to the victim's daughter is

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unpreserved for appellate review (*see* CPL 470.05[2]; *People v Dahlbender*, 23 AD3d 493, 494). In any event, contrary to the defendant's claim, "[t]he challenged evidence did not 'concern the type of illegal or immoral conduct which would deprive the defendant of a fair trial'" (*People v Jenneman*, 37 AD3d 736, 737-738, quoting *People v Gonsa*, 220 AD2d 27, 30; *People v Hall*, 299 AD2d 493; *People v Jones*, 293 AD2d 489). Further, the Supreme Court properly instructed the jurors that they were to consider such testimony only as relevant background information and to complete the narrative of the crime charged (*see People v Berg*, 59 NY2d 294, 299-300; *People v Johnson*, 45 AD3d 606; *People v Hall*, 299 AD2d 493; *People v Correa*, 246 AD2d 552; *People v Davis*, 169 AD2d 774, 775; *see also People v Chestnut*, 254 AD2d 525, 526).

However, as the defendant contends and the People correctly concede, the Supreme Court imposed an illegal determinate term of seven years imprisonment and a period of postrelease supervision on his conviction of criminal possession of a weapon in the third degree under Penal Law § 265.02(1), a nonviolent class D felony (*see* Penal Law §§ 265.02[1], 70.00[1], [6]; § 70.02[1][c]). Thus, we vacate the sentence on that conviction, and remit the matter to the Supreme Court, Kings County, for resentencing thereon.

DILLON, J.P., BELEN, ROMAN and MILLER, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court