

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

D32759
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_____AD3d_____

Submitted - October 11, 2011

A. GAIL PRUDENTI, P.J.
PETER B. SKELOS
RUTH C. BALKIN
SANDRA L. SGROI, JJ.

2010-02026

DECISION & ORDER

The People, etc., respondent,
v Merciful Johnson, appellant.

(Ind. No. 772/09)

Andrew E. MacAskill, Westbury, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Yael V. Levy and Emily A. Beman of counsel of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Nassau County (Robbins, J.), rendered January 26, 2010, convicting him of criminal possession of a weapon in the second degree, criminal possession of a weapon in the third degree, criminal possession of a controlled substance in the fifth degree, endangering the welfare of a child (two counts), and unlawful possession of marijuana, after a nonjury trial, and imposing sentence. The appeal brings up for review the denial, after a hearing (Peck, J.), pursuant to a stipulation in lieu of motions, of the suppression of physical evidence.

ORDERED that the judgment is affirmed.

Under the fellow officer rule, if an arresting officer lacks personal knowledge sufficient to establish probable cause, the arrest will be lawful if the officer acts as a result of communication with a fellow officer, provided that the police as a whole were in possession of information sufficient to constitute probable cause to make an arrest (*see People v Ramirez-Portoreal*, 88 NY2d 99, 113; *People v Berrouet*, 84 AD3d 1392, 1392, *lv denied* 17 NY3d 813; *People v Grier*, 47 AD3d 729). Here, the Supreme Court properly applied the fellow officer rule and concluded that the defendant's arrest was supported by probable cause.

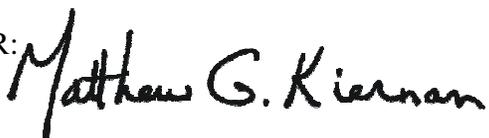
November 1, 2011

Page 1.

PEOPLE v JOHNSON, MERCIFUL

The defendant's contention that the evidence was legally insufficient to prove his guilt of criminal possession of a weapon in the third degree beyond a reasonable doubt is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Hawkins*, 11 NY3d 484). 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 guilt of criminal possession of a weapon in the third degree beyond a reasonable doubt. Moreover, upon our independent review pursuant to CPL 470.15(5), we are satisfied that the verdict of guilt as to criminal possession of a weapon in the third degree was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

PRUDENTI, P.J., SKELOS, BALKIN and SGROI, JJ., concur.

ENTER: 
Matthew G. Kiernan
Clerk of the Court