

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

D32824
Y/prt

_____AD3d_____

Argued - October 21, 2011

WILLIAM F. MASTRO, J.P.
MARK C. DILLON
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2010-01662

DECISION & ORDER

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

(Ind. No. 300/09)

Leon H. Tracy, Jericho, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Tammy J. Smiley, Anthony J. Viola, Andre K. Cizmarik, and Zachary W. Silverman of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Nassau County (Honorof, J.), rendered January 27, 2010, convicting him of burglary in the second degree, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing pursuant to a stipulation in lieu of motions, of suppression of his statements to law enforcement officials.

ORDERED that the judgment is affirmed.

The hearing court properly found that the defendant's statements to law enforcement officials followed a lawful arrest based upon probable cause (*see People v Ramirez-Portoreal*, 88 NY2d 99, 113-114; *People v Jackson*, 65 AD3d 1164). Contrary to the defendant's contention, nothing in the photographic array which led to the complainant's identification of the defendant impermissibly drew the viewer's attention to his photograph (*see People v Parham*, 74 AD3d 1237, 1238; *People v Avent*, 29 AD3d 601; *People v Price*, 256 AD2d 596, 597).

Viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620, 621), we find that it was legally sufficient to establish his guilt of burglary

November 9, 2011

Page 1.

PEOPLE v JOHNSON, STEVEN

in the second degree beyond a reasonable doubt (*see People v Hammon*, 47 AD3d 644, 644-645; *People v Washington*, 26 AD3d 400; *People v Murray*, 168 AD2d 573, 573-574). Moreover, 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).

Contrary to the defendant's contention, we also find that counsel provided the defendant with meaningful representation at the pretrial hearing and at sentencing (*see People v Baldi*, 54 NY2d 137, 146-147; *People v Larkins*, 10 AD3d 694).

The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

MASTRO, J.P., DILLON, SGROI and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court