

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

D32922
H/kmb

_____AD3d_____

Submitted - October 28, 2011

WILLIAM F. MASTRO, J.P.
CHERYL E. CHAMBERS
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2009-07204

DECISION & ORDER

The People, etc., respondent,
v Ediberto Garcia, appellant.

(Ind. No. 1705/08)

Lynn W. L. Fahey, New York, N.Y. (Katherine A. Levine of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Ellen C. Abbot, and Michael J. Balch of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Knopf, J.), rendered July 20, 2009, convicting him of robbery in the second degree and criminal possession of stolen property in the fifth degree, after a nonjury trial, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the People's contention, the defendant's contention that the evidence was legally insufficient to support his conviction of robbery in the second degree under Penal Law § 160.10(1) is preserved for appellate review (*see* CPL 470.05[2]). However, 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 support the defendant's convictions of robbery in the second degree and criminal possession of stolen property in the fifth degree. 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 factfinder'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,

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we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

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

ENTER:


Matthew G. Kiernan
Clerk of the Court