

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

D32931
C/kmb

_____AD3d_____

Argued - October 31, 2011

REINALDO E. RIVERA, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
SHERI S. ROMAN, JJ.

2010-00395

DECISION & ORDER

The People, etc., respondent,
v Kevin Watts, appellant.

(Ind. No. 5001/08)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Jodi L. Mandel of counsel; Samuel K. Mersky on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Marrus, J.), rendered January 5, 2010, convicting him of burglary in the third degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

In fashioning its *Sandoval* ruling (*see People v Sandoval*, 34 NY2d 371), the Supreme Court “struck an appropriate balance between the probative value of the defendant’s prior crimes and the possible prejudice to the defendant” (*People v Townsend*, 70 AD3d 982, 982; *see People v Sandoval*, 34 NY2d 371). A defendant is not insulated from impeachment by use of past convictions merely because those crimes are similar to the crime charged (*see People v Pavao*, 59 NY2d 282, 292; *People v Aguayo*, 85 AD3d 809, 810, *lv denied* 17 NY3d 812; *People v Springer*, 13 AD3d 657, 658).

The defendant’s contention that his adjudication as a persistent felony offender was unconstitutional pursuant to *Apprendi v New Jersey* (530 US 466) is without merit (*see People v Quinones*, 12 NY3d 116, *cert denied* _____US_____, 130 S Ct 104; *People v Rivera*, 5 NY3d 61,

cert denied 546 US 984; *People v Rosen*, 96 NY2d 329, *cert denied* 534 US 899). Furthermore, the Supreme Court's determination to sentence the defendant as a persistent felony offender was a provident exercise of its discretion (*see* Penal Law § 70.10; *People v Ortiz*, 41 AD3d 276, 276, *cert denied* 552 US 1030; *People v Bailey*, 19 AD3d 302, 303, *cert denied* 547 US 1045).

RIVERA, J.P., DICKERSON, ENG and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court