

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

D33059
Y/prt

_____AD3d_____

Argued - November 7, 2011

PETER B. SKELOS, J.P.
RUTH C. BALKIN
RANDALL T. ENG
SANDRA L. SGROI, JJ.

2009-00814

DECISION & ORDER

The People, etc., respondent,
v Christopher Marinus, appellant.

(Ind. No. 3548B-07)

Robert C. Mitchell, Riverhead, N.Y. (Robert L. Cicale and John Dowden of counsel),
for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Glenn Green and Michael
Brennan of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (Efman, J.), rendered January 7, 2009, convicting him of assault in the second degree, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing, of that branch of the defendant's omnibus motion which was to suppress his statements to law enforcement officials.

ORDERED that the judgment is affirmed.

The County Court properly denied that branch of the defendant's omnibus motion which was to suppress the statements he gave to law enforcement officials on July 1, 2007, and July 11, 2007. The credibility determinations made by the County Court after a suppression hearing are entitled to great deference on appeal, and will not be disturbed unless clearly unsupported by the record (*see People v Prochilo*, 41 NY2d 759, 761; *People v Spann*, 82 AD3d 1013, 1014; *People v Smith*, 77 AD3d 980, 981; *People v Leggio*, 305 AD2d 518, 519). Contrary to the defendant's contention, the evidence presented at the suppression hearing supports the County Court's determination that a reasonable person, innocent of any crime, would not have believed that he was

December 6, 2011

Page 1.

PEOPLE v MARINUS, CHRISTOPHER

in custody at the time the statements were made (*see People v Yukl*, 25 NY2d 585, 589, *cert denied* 400 US 851; *People v Borukhova*, ___AD3d___, 2011 NY Slip Op 07646 [2d Dept 2011]; *People v Smith*, 77 AD3d at 981; *People v Perez*, 44 AD3d 441, 442; *People v Dillhunt*, 41 AD3d 216, 217). Accordingly, the statements were not the product of custodial interrogation improperly conducted without the administration of *Miranda* warnings (*see Miranda v Arizona*, 384 US 436, 444).

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 assault in the second degree beyond a reasonable doubt. 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).

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

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

ENTER:


Aprilanne Agostino
Clerk of the Court