

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

D33098
H/prt

_____AD3d_____

Submitted - November 10, 2011

WILLIAM F. MASTRO, J.P.
CHERYL E. CHAMBERS
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2009-00571

DECISION & ORDER

The People, etc., respondent,
v Eleno Morales, appellant.

(Ind. No. 3665/07)

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

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Marion M. Tang of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (Hinrichs, J.), rendered December 10, 2008, convicting him of murder in the second degree, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing, of those branches of the defendant's omnibus motion which were to suppress statements made to and in the presence of law enforcement officers.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the County Court properly concluded that the defendant's statements were voluntary, and that the defendant "spoke with genuine spontaneity 'and not [as] the result of inducement, provocation, encouragement or acquiescence, no matter how subtly employed'" (*People v Rivers*, 56 NY2d 476, 479, quoting *People v Maerling*, 46 NY2d 289, 302-303; see *People v Bajana*, 82 AD3d 1111; *People v Tyrell*, 67 AD3d 827, 828; *People v Ayers*, 43 AD3d 1071, 1071-1072). Accordingly, the County Court properly denied those branches of the defendant's omnibus motion which were to suppress statements made to and in the presence of law enforcement officers.

November 29, 2011

PEOPLE v MORALES, ELENO

Page 1.

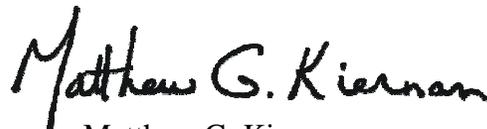
The defendant failed to preserve for appellate review his challenge to the legal sufficiency of the evidence (*see* CPL 470.05[2]; *People v Hawkins*, 11 NY3d 484, 493). In any event, viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620), we find that the evidence was legally sufficient to establish the defendant's guilt 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).

While the County Court erred in admitting into evidence a prior consistent statement of the People's witness, that error was harmless as there was overwhelming evidence of the defendant's guilt and no significant probability that the error contributed to the defendant's conviction (*see People v Seit*, 86 NY2d 92, 97; *People v Crimmins*, 36 NY2d 230, 242; *People v Evans*, 16 AD3d 517).

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

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

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court