

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

D33372  
O/kmb

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Submitted - December 6, 2011

REINALDO E. RIVERA, J.P.  
RANDALL T. ENG  
SHERI S. ROMAN  
SANDRA L. SGROI, JJ.

2009-06180

DECISION & ORDER

The People, etc., respondent,  
v Cedric McCalla, appellant.

(Ind. No. 2308/08)

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Lynn W. L. Fahey, New York, N.Y. (Reyna E. Marder of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,  
Nicoletta J. Caferri, and Sharon Y. Brodt of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Hollie, J.), rendered June 9, 2009, convicting him of assault in the second degree and assault in the third degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is modified, on the law, by vacating the conviction of assault in the third degree, vacating the sentence imposed thereon, and dismissing that count of the indictment; as so modified, the judgment is affirmed.

The trial court providently exercised its discretion in limiting the scope of defense counsel's questioning of prospective jurors during voir dire (*see* CPL 270.15[1][c]; *People v Pepper*, 59 NY2d 353, 358, 359; *People v Byrd*, 284 AD2d 201; *People v Corbett*, 68 AD2d 772, 778-779, *affd* 52 NY2d 714).

As the People correctly concede, the defendant's conviction of assault in the third degree must be vacated and that count of the indictment dismissed as an inclusory concurrent count

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of assault in the second degree (*see* CPL 300.40[3][b]; Penal Law §§ 120.05[1], 120.00[1]).

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

ENTER:

  
Aprilanne Agostino  
Clerk of the Court