

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

D33404  
W/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - November 21, 2011

DANIEL D. ANGIOLILLO, J.P.  
THOMAS A. DICKERSON  
PLUMMER E. LOTT  
ROBERT J. MILLER, JJ.

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2009-11513

DECISION & ORDER

The People, etc., respondent,  
v Derek Leach, appellant.

(Ind. No. 2948/08)

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Lynn W. L. Fahey, New York, N.Y. (Winston McIntosh of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Sholom J. Twersky, and Terry-Ann Corniffe of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Guzman, J.), rendered October 29, 2009, convicting him of attempted assault in the first degree (two counts), criminal possession of a weapon in the second degree, and reckless endangerment in the first degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's challenge to the legal sufficiency of the evidence is unpreserved for appellate review (*see People v Hawkins*, 11 NY3d 484, 492). In any event, 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 beyond a reasonable doubt. Moreover, upon our independent review pursuant to CPL 470.15(5), we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

The defendant's objections to the allegedly prejudicial comments made by the prosecutor in his summation are similarly unpreserved for appellate review (*see CPL 470.05[2]*). In any event, most of the prosecutor's remarks were proper in light of the evidence adduced at trial

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and in response to the defense counsel's summation (*see People v Ashwal*, 39 NY2d 105). Although a few of the comments were improper, the Supreme Court sustained the defendant's objections to them, struck the comments, and issued curative instructions to the jury. Since the defendant sought no further relief, he is deemed to have been satisfied by the Supreme Court's curative instructions (*see People v Heide*, 84 NY2d 943, 944; *People v Damon*, 78 AD3d 860, 861).

The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80, 85).

ANGIOLILLO, J.P., DICKERSON, LOTT and MILLER, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court