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

D33554
O/ct

_____AD3d_____ Argued - December 16, 2011

RANDALL T. ENG, P.J.
MARK C. DILLON
THOMAS A. DICKERSON
JOHN M. LEVENTHAL, JJ.

2010-07018 DECISION & ORDER

The People, etc., respondent,
v Jean Louis, appellant.

(Ind. No. 1941N/09)

Thomas Keating, Dobbs Ferry, N.Y. (Joseph M. Angiolillo of counsel), for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Tammy J. Smiley and Michael J. Balch of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Nassau County (Berkowitz, J.), rendered July 6, 2010, as amended January 18, 2011, convicting him of burglary in the first degree, burglary in the second degree (three counts), assault in the second degree, criminal possession of a weapon in the third degree, possession of burglar's tools, and criminal use of a firearm in the first degree (two counts), upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing (Grella, J.) pursuant to a stipulation in lieu of motions, of suppression of physical evidence and the defendant's statements to law enforcement officials.

ORDERED that the judgment, as amended, is affirmed.

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 on the charge of burglary in the first degree beyond a reasonable doubt (*see* Penal Law § 140.30[2]; *cf. People v Chiddick*, 8 NY3d 445). 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 Danielson*, 9 NY3d 342; *People v Romero*, 7 NY3d 633). Contrary to the defendant's contention, the evidence presented at trial was sufficient to establish that the complainant sustained

a “physical injury” within the meaning of Penal Law § 10.00(9) (*see People v Sloan*, 202 AD2d 525; *cf. People v Phillips*, 68 AD3d 1137).

The defendant’s contention that the Supreme Court erred by allowing the introduction of evidence of prior uncharged crimes or bad acts (*see generally People v Ventimiglia*, 52 NY2d 350; *People v Molineux*, 168 NY 264) is unpreserved for appellate review (*see* CPL 470.05[2]). In any event, any error was harmless, as there was overwhelming evidence of the defendant's guilt, and no significant probability that the error affected the verdict (*see People v Crimmins*, 36 NY2d 230, 241-242).

The hearing court properly denied suppression of the physical evidence recovered from the vehicle in which he was a passenger, as well as his statements to law enforcement officials. “The credibility determinations of a hearing court are entitled to great deference on appeal, and will not be disturbed unless clearly unsupported by the record” (*People v Martinez*, 58 AD3d 870, 870–871; *see People v Prochilo*, 41 NY2d 759, 761). Contrary to the defendant's contention, there is no basis in the record to disturb the hearing court's credibility determinations.

There is no merit to the defendant’s remaining contention.

ENG, P.J., DILLON, DICKERSON and LEVENTHAL, JJ., concur.

ENTER:

Aprilanne Agostino
Clerk of the Court