

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

D33564  
C/kmb

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Submitted - December 13, 2011

ANITA R. FLORIO, J.P.  
ARIEL E. BELEN  
SHERI S. ROMAN  
SANDRA L. SGROI, JJ.

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2011-00673

DECISION & ORDER

The People, etc., respondent,  
v Vincent Pacienza, appellant.

(Ind. No. 2394/09)

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Dennis M. Lemke, Mineola, N.Y., for appellant.

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

Appeal by the defendant from a judgment of the Supreme Court, Nassau County (Donnino, J.), rendered January 21, 2011, convicting him of unlawful surveillance in the second degree, after a nonjury trial, and imposing sentence.

ORDERED that the judgment is affirmed, and the matter is remitted to the Supreme Court, Nassau County, for further proceedings pursuant to CPL 460.50(5).

Contrary to the defendant's contention, Penal Law § 250.45(3)(a) is not unconstitutionally vague. The statute provides a person of ordinary intelligence with a reasonable opportunity to know the conduct that is proscribed and contains clear standards for enforcement (*see People v Stuart*, 100 NY2d 412, 420; *People v Shack*, 86 NY2d 529, 538; *People v Eun Sil Jang*, 17 AD3d 693). In addition, the rebuttable presumption set forth in Penal Law § 250.45(3)(b) is not a violation of due process rights, as there is a rational connection between the facts proved and the fact presumed (*see People v Leyva*, 38 NY2d 160, 165-166; *People v Terra*, 303 NY 332, 335; *People v Rosano*, 69 AD2d 643, 656, *affd* 50 NY2d 1013).

Viewing the evidence in the light most favorable to the prosecution (*see People v*

*Contes*, 60 NY2d 620, 621), we find that it 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, 348), we nevertheless accord great deference to the trier of fact'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).

FLORIO, J.P., BELEN, ROMAN and SGROI, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court