

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

D33876
O/kmb

_____AD3d_____

Argued - January 19, 2012

REINALDO E. RIVERA, J.P.
THOMAS A. DICKERSON
CHERYL E. CHAMBERS
LEONARD B. AUSTIN, JJ.

2009-09797

DECISION & ORDER

The People, etc., respondent,
v Herby Dorce, appellant.

(Ind. No. 2441/08)

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

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Johnnette Traill, and Danielle Hartman of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Cooperman, J.), rendered September 17, 2009, convicting him of assault in the second degree (two counts), criminal possession of a weapon in the third degree, and criminal trespass in the third degree, after a nonjury trial, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that his convictions of assault in the second degree and criminal possession of a weapon in the third degree are based on legally insufficient evidence is unpreserved for appellate review (*see* CPL 470.05[2]; *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, 621), we find that it was legally sufficient to establish the defendant's guilt of those counts beyond a reasonable doubt (*see People v Chiddick*, 8 NY3d 445, 447-448; *People v Williams*, 69 AD3d 662, 662-663; *People v Rivera*, 42 AD3d 587, 588-589; *People v Rollins*, 273 AD2d 159, 160; *People v Sheppard*, 202 AD2d 701, 702). Moreover, upon our independent review pursuant to CPL 470.15(5), we are satisfied that the verdict of guilt of assault in the second degree and criminal possession of a weapon in the third degree was not against the weight of the evidence (*see*

People v Romero, 7 NY3d 633; *People v Parris*, 70 AD3d 725, 727; *People v Williamson*, 21 AD3d 575, 575-576). Any inconsistencies or discrepancies in the police officer's testimony did not render his testimony incredible (*see People v Middleton*, 36 AD3d 941, 942).

RIVERA, J.P., DICKERSON, CHAMBERS and AUSTIN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court