

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

D34025
G/kmb

_____AD3d_____

Argued - January 20, 2012

WILLIAM F. MASTRO, A.P.J.
DANIEL D. ANGIOLILLO
RANDALL T. ENG
JEFFREY A. COHEN, JJ.

2010-05555

DECISION & ORDER

The People, etc., respondent,
v Deshawn Rogers, appellant.

(Ind. No. 4275/09)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Thomas M. Ross, and Bruce Alderman of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Balter, J.), rendered June 2, 2010, convicting him of criminal possession of a weapon in the second degree (two counts), upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing, of that branch of the defendant's omnibus motion which was to suppress certain evidence.

ORDERED that the judgment is affirmed.

According to testimony adduced at a suppression hearing, in the early morning of May 9, 2009, several police officers conducted a "vertical" patrol of a building at the Bushwick Houses in Brooklyn. The officers were in plain clothes and displayed their shields on a chain around their necks. While in the courtyard prior to entering the building, a sergeant observed the defendant remove what appeared to be a firearm from his waistband. The sergeant yelled "gun." The defendant saw the sergeant and fled into the building and up a stairwell, pursued by the sergeant. On the first floor landing, the defendant dropped the gun, and the sergeant recovered it before apprehending the defendant. The hearing court credited the sergeant's testimony and denied that branch of the defendant's omnibus motion which was to suppress the gun, as well as other physical evidence.

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“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, on this record, there is no basis to disturb the hearing court’s finding that the sergeant observed the defendant remove what appeared to be a firearm from his waistband prior to the defendant’s flight and the sergeant’s pursuit. The hearing testimony established that the sergeant had reasonable suspicion to pursue the defendant and, thus, the defendant’s abandonment of the gun was not the product of an unlawful police pursuit (*see People v Stephenson*, 89 AD3d 872; *People v Washington*, 81 AD3d 991, 992; *cf. People v Brogdon*, 8 AD3d 290, 291-292).

The defendant’s claims that the prosecutor conducted improper cross-examinations of two defense witnesses are unpreserved for appellate review (*see CPL 470.05[2]*; *People v Gill*, 54 AD3d 965; *People v Jones*, 46 AD3d 840), and we decline to review them in the exercise of our interest of justice jurisdiction.

The defendant contends that certain of the prosecutor’s comments on summation deprived him of a fair trial. The defendant failed to preserve for appellate review his contentions with respect to all of the challenged comments except two remarks which concerned the credibility of the officers who testified (*see CPL 470.05[2]*; *People v Romero*, 7 NY3d 911, 912; *People v Brown*, 48 AD3d 590, 591; *People v Salnave*, 41 AD3d 872, 874). In any event, most of the challenged remarks were either responsive to the defense counsel’s summation or fair comment upon the evidence. To the extent that some of the remarks were improper, they were not so flagrant or pervasive as to deny the defendant a fair trial, and thus, reversal is not warranted (*see People v Banyan*, 60 AD3d 861; *People v Almonte*, 23 AD3d 392, 394).

MASTRO, A.P.J., ANGIOLILLO, ENG and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court