

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

D34051
W/prt

_____AD3d_____

Argued - January 17, 2012

MARK C. DILLON, J.P.
JOHN M. LEVENTHAL
ARIEL E. BELEN
PLUMMER E. LOTT, JJ.

2009-01948

DECISION & ORDER

The People, etc., respondent,
v Roberto Rodriguez, appellant.

(Ind. No. 10636/06)

Steven Banks, New York, N.Y. (Paul Wiener of counsel), for appellant, and appellant pro se.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Howard B. Goodman of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Del Giudice, J.), rendered February 18, 2009, convicting him of murder in the second degree, robbery in the first degree, and criminal possession of a weapon in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, he was not deprived of the effective assistance of counsel as a result of his trial counsel's failure to move for a severance of his trial from that of his codefendant (*see People v Velez*, 78 AD3d 1522, 1522-1523; *People v Alvarenga*, 25 AD3d 560, 561; *People v Ruger*, 288 AD2d 686, 687). "Nor does the defendant's disagreement with his trial counsel's tactics on cross-examination render the representation less than meaningful" (*People v Alvarenga*, 25 AD3d at 561; *see People v Benevento*, 91 NY2d 708, 712-713; *People v Aiken*, 45 NY2d 394, 400; *People v DiCarlo*, 293 AD2d 279, 280-281). Moreover, the defendant's contention that, during summation, his counsel mischaracterized a witness's testimony is without merit. Viewing the record as a whole, we conclude that the defendant received effective assistance of

February 21, 2012

Page 1.

PEOPLE v RODRIGUEZ, ROBERTO

counsel under both federal and state standards (*see Strickland v Washington*, 466 US 668, 694; *People v Caban*, 5 NY3d 143, 152-156; *People v Tomlinson*, 67 AD3d 826, 827; *People v Ross*, 209 AD2d 730).

The defendant's challenge to the sufficiency of the evidence, raised in his pro se supplemental brief, 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), 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), we nevertheless accord great deference to the jury'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).

Further, contrary to the defendant's contention, raised in his pro se supplemental brief, the trial court did not err in refusing to give an intoxication charge to the jury (*see* Penal Law § 15.25). Viewing the intoxication evidence in the light most favorable to the defendant (*see People v Sirico*, 17 NY3d 744, 745), we find that it was insufficient to allow a reasonable person to entertain doubt as to the element of intent based on intoxication (*id.*; *see People v Gaines*, 83 NY2d 925, 927; *People v Oddone*, 89 AD3d 868; *People v Albanese*, 84 AD3d 1107, 1108; *People v Brown*, 73 AD3d 940, 940-941).

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

DILLON, J.P., LEVENTHAL, BELEN and LOTT, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court