

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

D34168
G/mv

_____AD3d_____

Argued - February 3, 2012

RUTH C. BALKIN, J.P.
ARIEL E. BELEN
L. PRISCILLA HALL
SANDRA L. SGROI, JJ.

2008-01856
2009-01865

DECISION & ORDER

The People, etc., respondent,
v Bradford Washington, appellant.

(Ind. Nos. 999/05, 1000/05)

Steven Banks, New York, N.Y. (Lorraine Maddalo of counsel), for appellant.

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

Appeals by the defendant from (1) a judgment of the Supreme Court, Queens County (Buchter, J.), rendered January 31, 2008, convicting him of murder in the second degree, criminal possession of a weapon in the second degree, reckless endangerment in the first degree, and endangering the welfare of a child, under Indictment No. 999/05, upon a jury verdict, and imposing sentence, and (2) a judgment of the same court rendered February 11, 2009, convicting him of murder in the second degree, under Indictment No. 1000/05, upon his plea of guilty, and imposing sentence.

ORDERED that the judgments are affirmed.

The defendant's contentions that the court improperly permitted a detective to testify about his attempts to find the defendant and that it improperly charged the jury on consciousness of guilt are unpreserved for appellate review (*see People v Arriaga*, 77 AD3d 846, 847). In any event, those claims are without merit. First, the detective's testimony supported the People's argument that the defendant's attempt to evade the police demonstrated his consciousness of guilt (*id.* at 847; *see People v Solimini*, 69 AD3d 657, 658; *People v Scharpf*, 60 AD3d 1101, 1103; *People v Allen*, 61 AD2d 619, 622, *aff'd* 48 NY2d 760; *cf. People v Stilwell*, 244 NY 196, 199). Second, a charge on consciousness of guilt was warranted by the evidence, and the court's charge here was correct (*see*

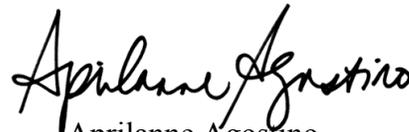
People v Arriaga, 77 AD3d at 847; *People v Robinson*, 10 AD3d 696; CJI2d[NY] Consciousness of Guilt).

The defendant's contention that the prosecutor changed the theory of the prosecution during his summation is without merit. A fair reading of the summation reveals that the prosecutor never wavered from the People's theory that the defendant had been the gunman. In any event, the defendant's status as a principal or accomplice has no bearing on the theory of liability (*see People v Mateo*, 2 NY3d 383, 408-409, *cert denied* 542 US 946; *People v Rivera*, 84 NY2d 766, 770-771).

Inasmuch as the defendant raises no independent claim regarding his conviction under Indictment No. 1000/05, that judgment must be affirmed in light of the affirmance of the judgment on Indictment No. 999/05 (*cf. People v Fuggazzatto*, 62 NY2d 862, 863).

BALKIN, J.P., BELEN, HALL and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court