

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

D34256  
Y/kmb

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Argued - February 14, 2012

REINALDO E. RIVERA, J.P.  
CHERYL E. CHAMBERS  
LEONARD B. AUSTIN  
SHERI S. ROMAN, JJ.

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2007-00156

DECISION & ORDER

The People, etc., respondent,  
v James Alcide, appellant.

(Ind. No. 1830/05)

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Lynn W. L. Fahey, New York, N.Y. (Melissa S. Horlick of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Keith Dolan of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Reichbach, J.), rendered December 12, 2006, convicting him of murder in the second degree and criminal possession of a weapon in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the Supreme Court's procedure for handling certain jury notes violated the procedure set forth by the Court of Appeals in *People v O'Rama* (78 NY2d 270, 277-278) is unpreserved for appellate review (*see People v Ramirez*, 15 NY3d 824, 825-826; *People v Bryant*, 82 AD3d 1114), and we decline to reach the contention in the exercise of our interest of justice jurisdiction. Since the jury merely requested read-backs of certain trial testimony, the alleged error did not constitute a mode of proceedings error which would obviate the preservation requirement (*see People v Starling*, 85 NY2d 509; *People v Bryant*, 82 AD3d at 1114).

The defendant's contention regarding the Supreme Court's participation in reading back certain trial testimony is also unpreserved for appellate review, and we also decline to review that contention in the exercise of our interest of justice jurisdiction.

May 1, 2012

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The defendant's remaining contention is without merit.

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

ENTER:

  
Aprilanne Agostino  
Clerk of the Court