

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

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Submitted - March 30, 2012

PETER B. SKELOS, J.P.  
ANITA R. FLORIO  
ARIEL E. BELEN  
SANDRA L. SGROI, JJ.

2010-06679

DECISION & ORDER

The People, etc., respondent,  
v Edward Whitney, appellant.

(Ind. No. 09-00687)

Jason M. Bernheimer, Katonah, N.Y., for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (Lois Cullen Valerio and Richard Longworth Hecht of counsel; Frank Marallo on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Westchester County (Wetzel, J.), rendered May 7, 2010, convicting him of criminal possession of a weapon in the third degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

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 support the defendant's conviction of criminal possession of a weapon in the third degree. Additionally, 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).

The defendant's challenge to certain supplemental jury instructions is unpreserved for appellate review (*see CPL 470.05[2]; People v Hyland*, 45 AD3d 781; *People v Lewis*, 247 AD2d

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555). In any event, the Supreme Court responded meaningfully to the jury's inquiries (*see People v Alomodovar*, 62 NY2d 126, 131; *People v Malloy*, 55 NY2d 296, 301-303, *cert denied* 459 US 847; *People v Hayes*, 48 AD3d 831), and its response, which was in complete accord with defense counsel's suggestions, did not prejudice the defendant.

SKELOS, J.P., FLORIO, BELEN and SGROI, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court