

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

D35020
W/kmb

_____AD3d_____

Argued - April 3, 2012

DANIEL D. ANGIOLILLO, J.P.
PLUMMER E. LOTT
SHERI S. ROMAN
ROBERT J. MILLER, JJ.

2010-03508

DECISION & ORDER

The People, etc., respondent,
v Erik Johnson, appellant.

(Ind. No. 3299/06)

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

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano and Daniel Bresnahan of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Lasak, J.), rendered March 25, 2010, convicting him of murder in the second degree and criminal possession of a weapon in the fourth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant was convicted, upon a jury verdict, of murder in the second degree and criminal possession of a weapon in the fourth degree. The defendant appeals from the judgment of conviction. We affirm.

“[E]ven if the Supreme Court erred in denying the defendant’s request for a missing witness charge, any error was harmless, as there was overwhelming evidence of the defendant’s guilt and no significant probability that the error contributed to his conviction” (*People v Smalls*, 81 AD3d 669, 670; *see People v Chardon*, 83 AD3d 954, 955; *compare People v Brown*, 75 AD3d 515, 516). For the same reason, any error in admitting certain hearsay testimony of third parties as to what the victim and one of the witnesses said was harmless (*see People v Harvey*, 270 AD2d 959, 960).

The defendant’s remaining contention is without merit.

May 23, 2012

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ANGIOLILLO, J.P., LOTT, ROMAN and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court