

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

D35090
O/kmb

_____AD3d_____

Submitted - April 20, 2012

WILLIAM F. MASTRO, A.P.J.
ANITA R. FLORIO
CHERYL E. CHAMBERS
SHERI S. ROMAN, JJ.

2011-02314

DECISION & ORDER

The People, etc., respondent,
v Nathaniel Boston, appellant.

(Ind. No. 7150/07)

Lynn W. L. Fahey, New York, N.Y. (A. Alexander Donn of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Sholom J. Twersky, and Michael L. Brenner of counsel), for respondent.

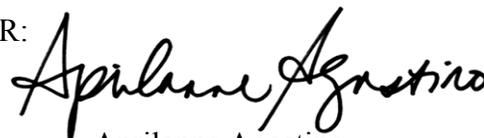
Appeal by the defendant from a resentence of the Supreme Court, Kings County (Marrus, J.), imposed February 22, 2011, after a hearing, held upon remittitur from this Court (*see People v Boston*, 79 AD3d 1140), upon his conviction of robbery in the third degree and criminal mischief in the fourth degree, upon a jury verdict.

ORDERED that the resentence is affirmed.

In accordance with our direction on a prior appeal (*see People v Boston*, 79 AD3d 1140), in determining whether the defendant's conviction in Florida for robbery constituted a felony under New York law, the Supreme Court properly considered the Florida accusatory instrument charging the defendant with robbery. Since the accusatory instrument alleged that the defendant intended to permanently deprive the complainant of certain property, the defendant's conviction in Florida for robbery constituted a felony under New York law and, thus, he was properly adjudicated a second felony offender (*see* Penal Law § 70.06[1][b][i]).

MASTRO, A.P.J., FLORIO, CHAMBERS and ROMAN, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court

May 30, 2012

PEOPLE v BOSTON, NATHANIEL