

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

D35777  
Y/ct

\_\_\_\_AD3d\_\_\_\_

Submitted - June 22, 2012

WILLIAM F. MASTRO, A.P.J.  
PETER B. SKELOS  
ANITA R. FLORIO  
L. PRISCILLA HALL, JJ.

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2009-09474

DECISION & ORDER

People of State of New York, etc., respondent,  
v Tyrone Mingo, appellant.

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Steven Banks, New York, N.Y. (Susan Epstein of counsel), for appellant.

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

Appeal by the defendant from an order of the Supreme Court, Kings County (Mullen, J.), dated October 1, 2009, which, after a hearing upon the remittitur from the Court of Appeals (*People v Mingo*, 12 NY3d 563), designated him a level two sex offender pursuant to Correction Law article 6-C.

ORDERED that the order is affirmed, without costs or disbursements.

Contrary to the defendant's contention, clear and convincing evidence supported the Supreme Court's determination that the assessment of 30 points under risk factor one was warranted. The assessment was based on the "use of violence," in that the defendant was armed with a dangerous instrument during the commission of the underlying sex offense. Specifically, the Supreme Court properly relied on, among other things, the victim's grand jury testimony (*see People v Mingo*, 12 NY3d 563, 573; *People v Carleo*, 82 AD3d 1067), which demonstrated that the defendant used a chrome metal strip to threaten the victim, as well as to strike her, during the commission of the underlying offense (*see People v Hendrix*, 60 AD3d 1081, 1082; *see also People v Kost*, 82 AD3d 729). Thus, the Supreme Court properly designated the defendant a level two sex

August 1, 2012

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offender.

MASTRO, A.P.J., SKELOS, FLORIO and HALL, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court