

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

D36121
N/kmb

_____AD3d_____

Submitted - September 11, 2012

RANDALL T. ENG, P.J.
REINALDO E. RIVERA
L. PRISCILLA HALL
SANDRA L. SGROI, JJ.

2010-09270

DECISION & ORDER

The People, etc., respondent,
v Usama Sidberry, appellant.

(Ind. No. 8360/08)

Lynn W. L. Fahey, New York, N.Y. (Jonathan M. Kratter of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Diane R. Eisner, and Oded Zaluski of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Dwyer, J.), rendered August 17, 2010, convicting him of assault in the second 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), we find that it was legally sufficient to establish his guilt of assault in the second degree beyond a reasonable doubt (*see* Penal Law § 120.05[1]). Moreover, upon our independent review pursuant to CPL 470.15(5), we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633). The evidence was sufficient to establish that the defendant repeatedly punched the victim in the face and head, causing the victim's serious head injuries, and the defendant's intent to cause serious physical injury within the meaning of Penal Law § 10.00(10) may be inferred from his conduct and the surrounding circumstances (*see People v Ramos*, 19 NY3d 133, 136; *People v Bracey*, 41 NY2d 296, 301; *People v Moore*, 89 AD3d 769; *People v Spurgeon*, 63 AD3d 863, 864; *see also People v Seabrooks*, 289 AD2d 515).

October 10, 2012

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The defendant's contention, in effect, that the verdict was repugnant because he was acquitted of manslaughter in the first degree in connection with the death of the victim, who died more than two months after the assault, is unpreserved for appellate review (*see People v Satloff*, 56 NY2d 745, 746; *People v Shamsiddeen*, 98 AD3d 694; *People v Tharpe*, 92 AD3d 701, 702; *People v Hicks*, 88 AD3d 817, 818), and, in any event, without merit.

ENG, P.J., RIVERA, HALL and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court