

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

D36152
T/ct

_____AD3d_____

Submitted - September 6, 2012

MARK C. DILLON, J.P.
THOMAS A. DICKERSON
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2009-00577

DECISION & ORDER

The People, etc., respondent,
v Stephen Scott, appellant.

(Ind. No. 6196/07)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Jodi L. Mandel, and Jordan W. Rossman of counsel; James Tuomey on the brief), for
respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County
(Konviser, J.), rendered December 17, 2008, convicting him of murder in the second degree and
criminal possession of a weapon in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention regarding allegedly improper comments made by the
prosecutor during summation is not preserved for appellate review (*see* CPL 470.05[2]), as the
defendant either failed to object to the challenged comments or made only a general objection (*see*
People v Balls, 69 NY2d 641, 642). In any event, the challenged remarks were not improper, since
they constituted fair comment on the evidence, were a fair response to the defense summation (*see*
People v Colon, 45 AD3d 776; *People v Urena*, 24 AD3d 693), or were harmless, as the evidence
of the defendant's guilt was overwhelming, and there is no significant probability that the allegedly
improper comments contributed to the defendant's convictions (*see People v Crimmins*, 36 NY2d
230, 241-242).

October 10, 2012

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The sentence imposed was not excessive (*see People v Suite*, 90 AD2d 80).

The defendant's contention, raised in his pro se supplemental brief, that the trial court erred in permitting the People to introduce expert testimony concerning the customs and practices of street gangs, is not preserved for appellate review (*see* CPL 470.05[2]). In any event, under the circumstances of this case, the expert testimony was properly admitted as probative of the defendant's motive for shooting and killing the victim (*see People v Scott*, 70 AD3d 977; *People v Avila*, 303 AD2d 165).

DILLON, J.P., DICKERSON, AUSTIN and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court