

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

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_____AD3d_____

Argued - September 18, 2012

REINALDO E. RIVERA, J.P.
CHERYL E. CHAMBERS
L. PRISCILLA HALL
SHERI S. ROMAN, JJ.

2009-07957

DECISION & ORDER

The People, etc., respondent,
v Ezette Edouard, appellant.

(Ind. No. 3777/08)

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 and Shulamit Rosenblum Nemeck of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Konviser, J.), rendered May 27, 2009, convicting her of assault in the first degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the evidence of identification was legally insufficient to support her conviction is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Hawkins*, 11 NY3d 484, 492). In any event, 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 beyond a reasonable doubt the defendant's identity as the perpetrator of the crime of which she was convicted. Moreover, in fulfilling our responsibility to conduct an independent review of the weight of the evidence (*see* CPL 470.15[5]; *People v Danielson*, 9 NY3d 342, 348-349), we nevertheless accord great deference to the jury's opportunity to view the witnesses, hear the testimony, and observe demeanor (*see People v Mateo*, 2 NY3d 383, 410, *cert denied* 542 US 946; *People v Bleakley*, 69 NY2d 490, 495). Upon reviewing the record, we are satisfied that the jury's verdict of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

The defendant's contention that the trial court erred in issuing an acting-in-concert

charge to the jury is unpreserved for appellate review (*see* CPL 470.05[2]). In any event, although the charge was unwarranted (*see People v Coldiron*, 53 AD3d 1140, 1141), the error was harmless, as there was overwhelming evidence of the defendant's guilt and no significant probability that the error contributed to her conviction (*see People v Crimmins*, 36 NY2d 230, 241-242).

RIVERA, J.P., CHAMBERS, HALL and ROMAN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court