

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

D36620
N/kmb

_____AD3d_____

Argued - December 8, 2011

MARK C. DILLON, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS, JJ.

2010-09639

DECISION & ORDER

The People, etc., respondent,
v Sebastian Wocjik, appellant.

(Ind. No. 1825/08)

Edward Irizarry, New York, N.Y., for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Johnnette Traill, and Ushir Pandit of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (McGann, J.), rendered September 21, 2010, convicting him of attempted murder in the second degree, gang assault in the first degree, assault in the first degree, and criminal possession of a weapon in the fourth degree (two counts), 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 the defendant's guilt beyond a reasonable doubt (*see e.g. People v Perez*, 265 AD2d 347; *People v Correa*, 265 AD2d 338). 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), we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

The defendant's contention that a police lieutenant's testimony and the prosecutor's summation improperly bolstered the testimony of two witnesses is unpreserved for appellate review (*see CPL 470.05[2]*), and, in any event, is without merit.

The defendant further contends that certain instructions given to the jury by the trial

court which the defendant refers to as the first and second *Allen* charges (*see Allen v United States*, 164 US 492) were erroneous. The defendant's contention that the first of these two jury instructions improperly suggested that a finding of guilt as to one of the two defendants would be sufficient to support a verdict of guilt as to both defendants is unpreserved for appellate review and, in any event, is without merit. Contrary to the defendant's further contention, neither of the challenged jury instructions was coercive.

DILLON, J.P., BALKIN, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court