

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

D36651
C/hu

_____AD3d_____

Argued - November 13, 2012

PETER B. SKELOS, J.P.
L. PRISCILLA HALL
LEONARD B. AUSTIN
SYLVIA HINDS-RADIX, JJ.

2009-10628

DECISION & ORDER

The People, etc., respondent,
v Christopher Llewellyn, appellant.

(Ind. No. 6809/08)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Keith Dolan, and Catherine Dagonese of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Del Giudice, J.), rendered October 22, 2009, convicting him of assault in the first degree, upon a jury verdict, and sentencing him to a determinate term of imprisonment of 25 years plus a period of 5 years of postrelease supervision.

ORDERED that the judgment is modified, as a matter of discretion in the interest of justice, by reducing the sentence of imprisonment from a determinate term of imprisonment of 25 years plus a period of 5 years of postrelease supervision to a determinate term of imprisonment of 18 years plus a period of 5 years of postrelease supervision; as so modified, the judgment is affirmed.

The defendant's contentions that he was deprived of his rights to a fair trial, to confrontation, to present a defense, and to the effective assistance of counsel are without merit. The trial court's remarks and comments, and the curtailment of defense counsel's questioning, were proper responses to defense counsel's tactics (*see People v Gonzalez*, 38 NY2d 208, 210; *People v Barron*, 309 AD2d 942, 943; *People v Serrano*, 253 AD2d 531, 532; *People v Troy*, 162 AD2d 744).

Because the statements of an alleged eyewitness recorded in police reports and police

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notes lacked sufficient indicia of reliability, the trial court properly excluded those statements (*see People v Robinson*, 89 NY2d 648, 654; *People v Alvarez*, 44 AD3d 562, 564; *People v Santiago*, 33 AD3d 448). Moreover, the court did not improvidently exercise its discretion in denying the defendant's request for a continuance of one business day to locate this eyewitness, as the record does not indicate that the witness was within the court's jurisdiction or that the requested continuance would have enabled defense counsel to locate the witness (*see People v Stewart*, 89 AD3d 1044, 1045).

The sentence imposed was excessive to the extent indicated herein.

SKELOS, J.P., HALL, AUSTIN and HINDS-RADIX, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court