

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

D36660
T/kmb

_____AD3d_____

Argued - January 18, 2011

RANDALL T. ENG, P.J.
WILLIAM F. MASTRO
MARK C. DILLON
SANDRA L. SGROI, JJ.

2008-01913

DECISION & ORDER

The People, etc., respondent,
v James Perry, appellant.

(Ind. No. 3893/06)

Lynn W. L. Fahey, New York, N.Y. (Chadbourne & Parke, LLP [Thomas E. Butler and Francesca J. Perkins], of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Thomas M. Ross, and Goodwin Procter, LLP [Maryana Zubok], of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Marrus, J.), rendered February 19, 2008, convicting him of criminally negligent homicide and criminal possession of a weapon in the second degree, upon a jury verdict, and imposing sentence. By decision and order dated February 1, 2011, this Court modified the judgment, on the law, by vacating the conviction of criminal possession of a weapon in the second degree, vacating the sentence imposed thereon, and remitting the matter to the Supreme Court for a new trial on that count of the indictment (*see People v Perry*, 81 AD3d 665). On April 3, 2012, the Court of Appeals reversed the decision and order of this Court and remitted the matter for consideration of the facts pursuant to CPL 470.25(2)(d) and 470.40(2)(b) (*see People v Perry*, 19 NY3d 70).

ORDERED that the judgment is affirmed.

The matter having been remitted to us for further proceedings in accordance with CPL 470.25(2)(d) and 470.40(2)(b), the facts have been considered and are determined to have been

December 5, 2012

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established.

ENG, P.J., MASTRO, DILLON and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court