

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

D36836
N/kmb

_____AD3d_____

Submitted - November 27, 2012

REINALDO E. RIVERA, J.P.
MARK C. DILLON
SHERI S. ROMAN
JEFFREY A. COHEN, JJ.

2010-10035

DECISION & ORDER

The People, etc., respondent,
v Isaiah Johnson, appellant.

(Ind. No. 423/09)

Lynn W. L. Fahey, New York, N.Y. (Jessica M. McNamara of counsel), for appellant.

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

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Hanophy, J.), rendered October 5, 2010, convicting him of robbery in the third degree, after a nonjury trial, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the Supreme Court's *Sandoval* ruling (*see People v Sandoval*, 34 NY2d 371) reflects a failure to exercise discretion is unpreserved for appellate review (*cf. People v Davis*, 50 AD3d 1589, 1590). In any event, the Supreme Court providently exercised its discretion in rendering its *Sandoval* ruling (*see People v Brightly*, 91 AD3d 667, 668; *People v Taylor*, 18 AD3d 783, 784; *People v Coward*, 248 AD2d 397, 397-398). We note that "an exercise of a trial court's *Sandoval* discretion should not be disturbed merely because the court did not provide a detailed recitation of its underlying reasoning, particularly where, as here, the basis of the court's decision may be inferred from the parties' arguments" (*People v Walker*, 83 NY2d 455, 459 [citation omitted]).

The defendant's contention that the *Sandoval* ruling precluded him from offering the only testimony that would have been favorable to his case is similarly unpreserved for appellate

December 19, 2012

Page 1.

PEOPLE v JOHNSON, ISAIAH

review. In any event, the contention is without merit. Not only is the defendant's contention belied by the record, but "the possible unavailability of other witnesses" does not mandate a *Sandoval* ruling in a defendant's favor (*People v Hayes*, 97 NY2d 203, 208; see *People v Garcia*, 45 AD3d 860).

RIVERA, J.P., DILLON, ROMAN and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court