

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

D36869
W/nl

_____AD3d_____

Submitted - November 15, 2012

MARK C. DILLON, J.P.
CHERYL E. CHAMBERS
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2011-03881

DECISION & ORDER

The People, etc., respondent,
v Domingo Roiz, appellant.

(Ind. No. 507/10)

Jillian S. Harrington, New York, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Sarah S. Rabinowitz and Courtney Weinberger of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Nassau County (Robbins, J.), rendered April 7, 2011, convicting him of assault in the first degree and criminal possession of a weapon in the fourth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's challenge to the legal sufficiency of the evidence supporting the 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 the defendant's guilt beyond a reasonable doubt. 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 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 here, we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

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The defendant received the effective assistance of counsel (*see People v Caban*, 5 NY3d 143, 152, 156; *People v Baldi*, 54 NY2d 137; *People v Taberas*, 60 AD3d 791, 793).

The defendant's contention that the sentence imposed penalized him for exercising his right to trial is unpreserved for appellate review (*see People v Osorio*, 49 AD3d 562, 564; *People v Hargroves*, 27 AD3d 765), and, in any event, is without merit (*see People v Ramos*, 74 AD3d 991, 992; *People v Hargroves*, 27 AD3d at 766). Moreover, the sentence imposed was not excessive (*see People v Suite*, 90 AD2d 80).

DILLON, J.P., CHAMBERS, SGROI and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court