

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

D54469
L/hu

_____AD3d_____

Argued - November 21, 2017

RUTH C. BALKIN, J.P.
L. PRISCILLA HALL
SYLVIA O. HINDS-RADIX
LINDA CHRISTOPHER, JJ.

2011-03566

DECISION & ORDER

The People, etc., respondent,
v Sean Johnstone, appellant.

(Ind. No. 4825/08)

Anthony L. Ricco, New York, NY (Kenneth J. Montgomery and Steven Z. Legon of counsel), for appellant.

Eric Gonzalez, District Attorney, Brooklyn, NY (Leonard Joblove and Morgan J. Dennehy of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (John Walsh, J.), rendered March 14, 2011, convicting him of conspiracy in the fourth degree, after a nonjury trial, 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, 621), we find that it was legally sufficient to establish the defendant's guilt of conspiracy in the fourth degree (Penal Law § 105.10[1]) 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 factfinder's opportunity to view the witnesses, hear the testimony, and observe demeanor (*see People v Mateo*, 2 NY3d 383, 410; *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).

January 24, 2018

PEOPLE v JOHNSTONE, SEAN

Page 1.

The defendant's argument that hearsay statements were improperly admitted into evidence is unpreserved for appellate review and, in any event, without merit (*see People v Caban*, 5 NY3d 143, 148; *People v Adames*, 53 AD3d 503, 503; *People v Santos*, 38 AD3d 574).

The defendant's remaining contention is without merit.

BALKIN, J.P., HALL, HINDS-RADIX and CHRISTOPHER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court