

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

D56123
Q/htr

_____AD3d_____

Argued - April 5, 2018

WILLIAM F. MASTRO, J.P.
REINALDO E. RIVERA
LEONARD B. AUSTIN
HECTOR D. LASALLE, JJ.

2016-03832

DECISION & ORDER

The People, etc., respondent,
v Marcell Haynes, appellant.

(Ind. No. 528/15)

Jarred S. Freeman, Staten Island, NY, for appellant.

Madeline Singas, District Attorney, Mineola, NY (Yael V. Levy and Mary Faldich of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Nassau County (Angelo A. Delligatti, J.), rendered April 1, 2016, convicting him of criminal possession of a weapon in the second degree and criminal possession of a firearm, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing, of that branch of the defendant's omnibus motion which was to suppress his statements to law enforcement officials.

ORDERED that the judgment is affirmed.

The defendant contends that the *Miranda* warnings (*see Miranda v Arizona*, 384 US 436) given to him before obtaining his statements were inadequate. This contention is unpreserved for appellate review and, in any event, without merit (*see People v Wallace*, 106 AD3d 1034, 1035; *People v Louisias*, 29 AD3d 1017, 1018-1019; *People v Bartlett*, 191 AD2d 574, 575).

The defendant's contention that the court should have inquired whether his failure to testify was intelligent and voluntary is unpreserved for appellate review (*see CPL 470.05[2]*). In any event, "[a] trial court does not have a general obligation to sua sponte ascertain if the defendant's failure to testify was a voluntary and intelligent waiver of his right" (*People v Marcelle*, 120 AD3d 833, 834, quoting *People v Dolan*, 2 AD3d 745, 746; *see People v Fratta*, 83 NY2d 771,

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772; *People v Marquis A.*, 145 AD3d 61, 66; *People v Pilato*, 145 AD3d 1593, 1595; *People v Cosby*, 82 AD3d 63, 66; *People v Menner*, 2 AD3d 650).

The defendant's challenge to the jury charge is unpreserved for appellate review (*see* CPL 470.05[2]) and, in any event, without merit.

MASTRO, J.P., RIVERA, AUSTIN and LASALLE, JJ., concur.

ENTER:

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

Aprilanne Agostino
Clerk of the Court