

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

D19070
O/prt

_____AD3d_____

Argued - April 3, 2008

HOWARD MILLER, J.P.
MARK C. DILLON
WILLIAM E. McCARTHY
ARIEL E. BELEN, JJ.

2006-02348

DECISION & ORDER

The People, etc., respondent,
v Osei Akomah, appellant.

(Ind. No. 2355/05)

Steven Banks, New York, N.Y. (Lawrence T. Hausman and White & Case, LLP [Jenna Z. Nicenko, Peter B. Patterson, and R. Gregory Parker], of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Thomas M. Ross, and Hayward H. Smith of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Konviser, J.), rendered February 10, 2006, convicting him of robbery in the second degree, criminal possession of a weapon in the fourth degree, and criminal possession of stolen property in the fifth degree, upon a jury verdict, and imposing sentence. Justice Belen has been substituted for Justice Chambers (*see* 22 NYCRR 670.1[c]).

ORDERED that the judgment is affirmed.

The defendant contends that the trial court erred in denying his request to submit the lesser-included offense of robbery in the third degree to the jury. However, the defendant's conduct, as perceived by the complainant, was the display of a gun within the meaning of Penal Law § 160.10(2). Thus, a reasonable view of the evidence would not support the conclusion that the crime occurred without the display of a gun (*see People v Cooper*, 294 AD2d 592; *People v Ruiz*, 220 AD2d 466; *People v Maynard*, 211 AD2d 505; *People v Mays*, 178 AD2d 557). Accordingly, the defendant's request for a charge on the lesser-included offense of robbery in the third degree was properly denied.

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Moreover, the trial court properly refused to charge the non-inclusory concurrent count of grand larceny in the fourth degree (*see* CPL 300.40[3][a]; *People v Leon*, 7 NY3d 109, 113-114).

The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

MILLER, J.P., DILLON, McCARTHY and BELEN, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court