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publication in the New York Reports.

No. 73
The People &c.,
Respondent,
v.
Pedro Melendez,
Appellant.

Lisa A. Packard, for appellant.
Rafael Curbelo, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed.
Defendant's claim that the trial court erred in not unequivocally conveying to the jury that the People were required to disprove defendant's alibi defense beyond a reasonable doubt (see People v Victor, 62 NY2d 374 [1984]) is unpreserved.

During the charge conference, defense counsel asked the court to deliver an alibi charge, arguing that the People must disprove alibi beyond a reasonable doubt. The court agreed to give the charge, noting that the pattern Criminal Jury Instruction had been amended to provide that the People could meet that burden by proving beyond a reasonable doubt that defendant committed the crime. The following day, the court showed the parties its proposed alibi charge, and again pointed out that the charge had recently been modified. Defense counsel neither objected to the court's proposed charge nor voiced an objection to the charge after it was given to the jury, thereby failing to alert the trial court to his current claim that the amended charge did not adequately instruct the jury that the People bear the burden of disproving a defendant's alibi defense (see People v Whalen, 59 NY2d 273, 279-280 [1983]).

Likewise unpreserved are defendant's contentions that the alibi charge and certain of the prosecutor's comments during summation shifted the burden of proof to defendant (see CPL 470.05 [2]).

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Order affirmed, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided May 3, 2011