

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

D12652
C/cb

_____AD3d_____

Submitted - October 5, 2006

ANITA R. FLORIO, J.P.
HOWARD MILLER
GLORIA GOLDSTEIN
ROBERT J. LUNN, JJ.

2004-03923

DECISION & ORDER

The People, etc., respondent,
v Volton Noel, appellant.

(Ind. No. 6907/02)

Lynn W. L. Fahey, New York, N.Y. (Alexis A. Ascher of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Anthea H. Bruffee, and Michele S. Carino of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Brennan, J.), rendered April 28, 2004, convicting him of assault in the second 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 failed to preserve for appellate review his contention that he was deprived of his constitutional right to a jury trial when the trial court failed to make inquiry of a juror to ascertain whether that juror was asleep during a portion of the court's charge, and we decline to exercise our interest of justice jurisdiction to address the contention (*see* CPL 470.15[6][a]; *People v Armstrong*, 26 AD3d 339).

FLORIO, J.P., MILLER, GOLDSTEIN and LUNN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

November 21, 2006

PEOPLE v NOEL, VOLTON