

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

D15960
O/gts

_____AD3d_____

Argued - June 14, 2007

A. GAIL PRUDENTI, P.J.
WILLIAM F. MASTRO
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON, JJ.

2003-09005

DECISION & ORDER

The People, etc., respondent,
v Aretha Atkinson, appellant.

(Ind. No. 4447/02)

Lynn W. L. Fahey, New York, N.Y. (Reyna E. Marder of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Keith Dolan, and Tziyonah M. Langsam of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Lott, J.), rendered September 10, 2003, convicting her of criminal possession of a weapon in the third degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the evidence was legally insufficient to establish her guilt beyond a reasonable doubt is unpreserved for appellate review and, in any event, is without merit (*see People v Chatman*, 14 AD3d 620; *People v Prescott*, 191 AD2d 521).

The defendant's contention regarding the denial of her challenge for cause to a prospective juror is without merit, as the prospective juror stated in unequivocal terms that she would be able to render a verdict based solely on the evidence adduced at trial (*see People v Smith*, 265 AD2d 583; *People v Jordan*, 244 AD2d 360).

To the extent that the defendant's claim of ineffective assistance of counsel involves matter dehors the record, it may not be reviewed on direct appeal (*see People v Peisahkman*, 29

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AD3d 352). To the extent that the defendant's ineffective assistance claim can be reviewed, it is without merit. The evidence, the law, and the circumstances of the case, viewed in totality and as of the time of representation, reveal that trial counsel provided meaningful representation. The defendant has failed to demonstrate the absence of strategic or other legitimate explanations for counsel's actions (*see People v Benevento*, 91 NY2d 708, 712).

PRUDENTI, P.J., MASTRO, ANGIOLILLO and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court