

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

D22183
W/kmg

_____AD3d_____

Submitted - January 26, 2009

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
DANIEL D. ANGIOLILLO
RANDALL T. ENG, JJ.

2007-11424

DECISION & ORDER

The People, etc., respondent,
v Akilah Whitley, appellant.

(Ind. No. 06-01616)

Barry E. Warhit, White Plains, N.Y., for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (Maria I. Wager, Lois Cullen Valerio, and Anthony J. Servino of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Westchester County (Neary, J.), rendered November 14, 2007, convicting her of attempted murder in the second degree, assault in the first degree, criminal possession of a weapon in the second degree, and aggravated harassment in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The Supreme Court correctly permitted testimony as to statements identifying the defendant as the assailant, made by the complainant just minutes after she had been shot in the abdomen at close range, and while she was still in "excruciating pain," to be admitted into evidence as excited utterances (*see People v Johnson*, 1 NY3d 302, 306; *People v Fratello*, 92 NY2d 565, 570; *People v Cotto*, 92 NY2d 68, 79; *People v Brown*, 70 NY2d 513, 519; *People v Edwards*, 47 NY2d 493, 497). The statements did not improperly bolster the complainant's testimony (*see People v Buie*, 86 NY2d 501, 506; *People v Caviness*, 38 NY2d 227, 232; *People v Coward*, 292 AD2d 630, 630; *People v Masas*, 244 AD2d 433, 433; *People v Farrell*, 228 AD2d 693, 694).

SPOLZINO, J.P., SANTUCCI, ANGIOLILLO and ENG, JJ., concur.

ENTER:


James Edward Pelzer

February 24, 2009

PEOPLE v WHITLEY, AKILAH

Clerk of the Court

February 24, 2009

PEOPLE v WHITLEY, AKILAH