

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

D29851
W/kmb

_____AD3d_____

Submitted - December 16, 2010

A. GAIL PRUDENTI, P.J.
DANIEL D. ANGIOLILLO
ANITA R. FLORIO
SANDRA L. SGROI, JJ.

2006-05453

DECISION & ORDER

The People, etc., respondent,
v Keith Waters, appellant.

(Ind. No. 6919/05)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Victor Barall of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Sullivan, J.), rendered May 16, 2006, convicting him of robbery in the first degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that the Supreme Court erred in denying his *Batson* challenges (*see Batson v Kentucky*, 476 US 79) with respect to the prosecutor's use of peremptory challenges to exclude African-American women from the jury. The prosecutor provided race- and gender-neutral explanations for excluding each of the prospective jurors at issue (*id.* at 97; *see People v Smocum*, 99 NY2d 418, 420). The Supreme Court's determination that these explanations were nonpretextual is entitled to deference on appeal and should not be disturbed where, as here, it is supported by the record (*see People v Hernandez*, 75 NY2d 350, 356-357, *affd* 500 US 352; *People v Fuller*, 302 AD2d 405).

PRUDENTI, P.J., ANGIOLILLO, FLORIO and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court

February 1, 2011

PEOPLE v WATERS, KEITH