

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

D33882
O/kmb

_____AD3d_____

Argued - January 20, 2012

WILLIAM F. MASTRO, A.P.J.
DANIEL D. ANGIOLILLO
RANDALL T. ENG
JEFFREY A. COHEN, JJ.

2009-10942

DECISION & ORDER

The People, etc., respondent,
v Rebecca Tharpe, appellant.

(Ind. No. 131/08)

Anthony L. Pendergrass, Buffalo, N.Y., for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (Gary Fidel and Edward D. Saslaw of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Holder, J.), rendered November 18, 2009, convicting her of falsifying business records in the first degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the verdict was repugnant because the jury found her guilty of falsifying business records in the first degree while acquitting her of grand larceny in the second degree is unpreserved for appellate review, as she failed to raise this issue before the jury was discharged (*see People v Alfaro*, 66 NY2d 985, 987; *People v Vazquez*, 82 AD3d 1273, 1275; *People v Ariza*, 77 AD3d 844, 845-846). In any event, viewing the elements of the offenses as charged to the jury (*see People v Tucker*, 55 NY2d 1, 7), the acquittal on the count of grand larceny in the second degree did not negate any of the elements of falsifying business records in the first degree (*see People v Crane*, 87 AD3d 1386, 1386, *lv denied* 17 NY3d 952).

Upon our independent review pursuant to CPL 470.15(5), we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

February 7, 2012

Page 1.

PEOPLE v THARPE, REBECCA

The defendant's remaining contention is without merit.

MASTRO, A.P.J., ANGIOLILLO, ENG and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court