

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

D35688
O/kmb

_____AD3d_____

Argued - June 18, 2012

MARK C. DILLON, J.P.
JOHN M. LEVENTHAL
LEONARD B. AUSTIN
SHERI S. ROMAN, JJ.

2010-00421

DECISION & ORDER

The People, etc., respondent,
v Rosa Berkel, appellant.

(Ind. No. 9675/08)

Lynn W. L. Fahey, New York, N.Y. (Ellen Fried of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Lori Glachman, and Catherine Dagonese of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Carroll, J.), rendered December 17, 2009, convicting her of assault in the second degree, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing (McKay, J.), of that branch of her omnibus motion which was to suppress statements she made to law enforcement officials.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the hearing court correctly concluded that she was not in custody when she made certain statements to detectives (*see People v Centano*, 76 NY2d 837, 838; *People v Yukl*, 25 NY2d 585, 589, *cert denied* 400 US 851) and, therefore, that the administration of *Miranda* warnings (*see Miranda v Arizona*, 384 US 436, 444-445) was not required during the interview.

The defendant's challenge to the trial court's ruling that she could be cross-examined regarding her knowledge of certain prior conduct of her son is without merit. The evidence the People sought to elicit was relevant (*see People v Arafet*, 13 NY3d 460, 465), and any prejudicial effect it may have had did not outweigh its probative value.

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The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

DILLON, J.P., LEVENTHAL, AUSTIN and ROMAN, 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