

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

D35892
N/kmb

____AD3d____

Submitted - June 12, 2012

DANIEL D. ANGIOLILLO, J.P.
THOMAS A. DICKERSON
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS, JJ.

2010-02299

DECISION & ORDER

The People, etc., respondent, v Kasib Shamsiddeen,
also known as Kasid Shamsiddeen, also known as
Titus Shamsiddeen, appellant.

(Ind. No. 152/08)

Yasmin Daley Duncan, Brooklyn, N.Y., for appellant.

William V. Grady, District Attorney, Poughkeepsie, N.Y. (Joan H. McCarthy of
counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Dutchess County
(Hayes, J.), rendered February 22, 2010, convicting him of criminal possession of a weapon in the
second degree (two counts), 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 him
guilty of criminal possession of a weapon in the second degree under Penal Law § 265.03(1)(b)
while acquitting him of murder in the second degree under Penal Law § 125.25(1) is unpreserved
for appellate review, as he failed to raise this issue before the jury was discharged (*see People v
Alfaro*, 66 NY2d 985, 987; *People v Tharpe*, 92 AD3d 701, 702). 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 murder in the second degree did not negate any of the elements of criminal possession of a
weapon in the second degree under Penal Law § 265.03(1)(b) (*see People v Brown*, 38 AD3d 676,
677; *People v Gatling*, 222 AD2d 606, 606).

August 22, 2012

Page 1.

PEOPLE v SHAMSIDDEEN, KASIB, also known as SHAMSIDDEEN,
KASID, also known as SHAMSIDDEEN, TITUS

The defendant's contention that the evidence was legally insufficient to support his convictions of criminal possession of a weapon in the second degree under Penal Law § 265.03(1)(b) and (3) is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Hawkins*, 11 NY3d 484; *People v Hewitt*, 82 AD3d 1119, 1121). In any event, viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620, 621), we find that it was legally sufficient to establish the defendant's guilt of both counts of criminal possession of a weapon in the second degree beyond a reasonable doubt. Moreover, 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).

The record does not support the defendant's contention that he was deprived of the effective assistance of counsel under the United States and New York Constitutions (*see Strickland v Washington*, 466 US 668; *People v Benevento*, 91 NY2d 708, 713; *People v Baldi*, 54 NY2d 137, 147). Contrary to the defendant's contention, defense counsel's failure to request that the County Court charge the jury that temporary and lawful possession of a firearm was a defense to criminal possession of a weapon in the second degree did not constitute ineffective assistance of counsel under the particular facts of this case. Viewing the evidence in the light most favorable to the defendant (*see People v Steele*, 26 NY2d 526, 529), there was no reasonable view of the evidence under which such a charge was warranted (*see People v Dickson*, 58 AD3d 1016, 1017-1018).

ANGIOLILLO, J.P., DICKERSON, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court