

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

D36890
C/kmb

_____AD3d_____

Argued - December 4, 2012

PETER B. SKELOS, J.P.
L. PRISCILLA HALL
SHERI S. ROMAN
JEFFREY A. COHEN, JJ.

2007-11623

DECISION & ORDER

The People, etc., respondent,
v Henry Herring, appellant.

(Ind. No. 1158/05)

Murray E. Singer, Port Washington, N.Y., for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Jeanette Lifschitz, and Rona I. Kugler of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Aloise, J.), rendered November 26, 2007, convicting him of robbery in the first degree (two counts), robbery in the second degree (three counts), criminal possession of a weapon in the second degree, criminal possession of a weapon in the third degree, criminal possession of stolen property in the third degree, and criminal possession of stolen property in the fifth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The trial court properly denied the defendant's challenge for cause to a prospective juror. There was no evidence in the record that the juror had "a state of mind that [was] likely to preclude [her] from rendering an impartial verdict based upon the evidence adduced at the trial" (CPL 270.20[1][b]; *see People v Callaghan*, 220 AD2d 609). Further, the record supports the court's determination that the prospective juror's ability to communicate in the English language was sufficient (*see CPL 270.20[1][a]*; *People v Chohan*, 254 AD2d 124). Contrary to the defendant's additional contention, defense counsel's decision not to exercise a peremptory challenge against that prospective juror after the court denied his challenge for cause did not constitute ineffective assistance of counsel (*see People v Caban*, 5 NY3d 143; *People v Benevento*, 91 NY2d 708).

December 26, 2012

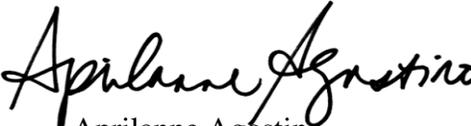
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There is no merit to the defendant's contention that he was denied his right to present a defense or to confront the witnesses against him because the Supreme Court precluded certain questions regarding police investigation of the crime. The defendant had the opportunity to question the arresting officer regarding the presence of another vehicle at the scene where the defendant was stopped and arrested, and the few questions that were not permitted were irrelevant and would have confused the main issue and misled the jury (*see People v Hayes*, 17 NY3d 46, 52-54, *cert denied* _____ US _____, 132 S Ct 844; *People v Sawyer*, 304 AD2d 775).

SKELOS, J.P., HALL, ROMAN and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court