

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

**357**

**KA 07-00824**

PRESENT: SCUDDER, P.J., PERADOTTO, LINDLEY, AND SCONIERS, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DYANI A. GREGORY, DEFENDANT-APPELLANT.

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TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (DAVID M. ABBATOY, JR., OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (ELIZABETH CLIFFORD OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Monroe County Court (John R. Schwartz, A.J.), rendered March 5, 2007. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a weapon in the third degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of criminal possession of a weapon in the third degree (Penal Law § 265.02 [former (4)]). The conviction arises from an incident in which a police officer heard loud music coming from an empty vehicle parked on a public street and observed defendant standing near the open driver's side window. The officer issued a noise ordinance violation to defendant and determined that the vehicle should be towed and impounded pursuant to a City of Rochester towing ordinance. During an inventory search of the vehicle, the officer found, inter alia, a handgun and hospital discharge papers bearing defendant's name. In pretrial motions and during the suppression hearing, defense counsel unsuccessfully attempted to demonstrate that defendant did not own or possess the vehicle and thus that the police lacked probable cause to arrest him inasmuch as there was no connection between defendant and the handgun.

We reject the contention of defendant that he was denied effective assistance of counsel based on defense counsel's unsuccessful attempt to establish that certain physical evidence should be suppressed (*see generally People v Baldi*, 54 NY2d 137, 147). That contention is "based largely on [defendant's] hindsight disagreement[] with defense counsel's . . . strategies, and defendant failed to meet his burden of establishing the absence of any legitimate explanations for those strategies" (*People v Morrison*, 48

AD3d 1044, 1045, *lv denied* 10 NY3d 867; *see People v Benevento*, 91 NY2d 708, 712-713).

Entered: April 30, 2010

Patricia L. Morgan  
Clerk of the Court