

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

D55732
G/htr

_____AD3d_____

Argued - February 16, 2018

JOHN M. LEVENTHAL, J.P.
JEFFREY A. COHEN
ROBERT J. MILLER
JOSEPH J. MALTESE, JJ.

2016-02593

DECISION & ORDER

The People, etc., respondent,
v Grover C. Anderson, appellant.

(Ind. No. 761/14)

Paul Skip Laisure, New York, NY (Rebecca J. Gannon of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, NY (John M. Castellano, Johnnette Traill, Joseph N. Ferdenzi, and Kayonia L. Whetstone of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Charles S. Lopresto, J.), rendered March 2, 2016, convicting him of criminal possession of a weapon in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

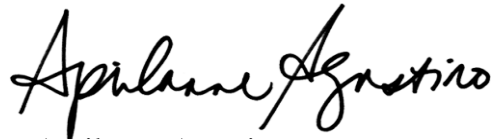
Contrary to the defendant's contention, the telephone conversation that the defendant had with his wife while he was incarcerated was properly admitted into evidence. Since, at the start of each conversation, the defendant was advised that the call he was placing might be recorded or monitored, he may not avail himself of the protection of the marital privilege (*see* CPLR 4502[b]; CPL 60.10; *Wolfe v United States*, 291 US 7, 14; *Matter of Vanderbilt [Rosner-Hickey]*, 57 NY2d 66, 73; *People v Wilkerson*, 140 AD3d 1297, 1303-1304; *People v Thomas*, 288 AD2d 405, 406).

The defendant's contention that the prosecutor provided an insufficient explanation for the prosecutor's exercise of a particular peremptory challenge upon the defendant's *Batson* challenge (*see Batson v Kentucky*, 476 US 79) is unpreserved for appellate review, as the defendant did not specifically raise that contention before the Supreme Court (*see* CPL 470.05[2]; *People v*

Smocum, 99 NY2d 418, 423; *People v Smith*, 81 NY2d 875, 876; *People v Anderson*, 142 AD3d 509, 509; *People v Wallace*, 128 AD3d 866, 868; *People v Hunter*, 16 AD3d 187, 188). In any event, the contention is without merit, as the prosecutor's explanation was facially race-neutral (see *People v Hicks*, 46 AD3d 466; *People v Cuthrell*, 284 AD2d 982).

LEVENTHAL, J.P., COHEN, MILLER and MALTESE, JJ., concur.

ENTER:

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

Aprilanne Agostino
Clerk of the Court