

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

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C/hu

_____AD3d_____

Argued - September 19, 2008

REINALDO E. RIVERA, J.P.
MARK C. DILLON
JOSEPH COVELLO
DANIEL D. ANGIOLILLO, JJ.

2006-03250

DECISION & ORDER

The People, etc., respondent,
v Richard Pinto, appellant.

(Ind. No. 5225/04)

Green & Willstatter, White Plains, N.Y. (Theodore S. Green of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Ann Bordley, and Terry-Ann Llewellyn of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Del Giudice, J.), rendered March 8, 2006, convicting him of murder in the second degree and 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 trial court did not improperly grant the People's reverse-*Batson* application (*see Batson v Kentucky*, 476 US 79). The court concluded that the facially race-neutral explanation provided by defense counsel to explain the peremptory challenge in question was pretextual. The trial court is in the best situation to assess the credibility of counsel's explanations (*see Hernandez v New York*, 500 US 352, 364; *People v Thompson*, 51 AD3d 951). The defendant failed to show how the employment status of the juror's husband was related to the facts of this case, which indicated that the race-neutral explanation provided by defense counsel was pretextual (*see People v Patterson*, 12 AD3d 694; *People v Campos*, 290 AD2d 456, 457). Additionally, the record establishes that defense counsel failed to challenge other seated jurors who had backgrounds similar to that of the challenged juror (*see People v Allen*, 86 NY2d 101, 110-111;

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People v McLaurin, 47 AD3d 843; *People v Sanford*, 297 AD2d 759). Accordingly, we see no reason to disturb the trial court's determination.

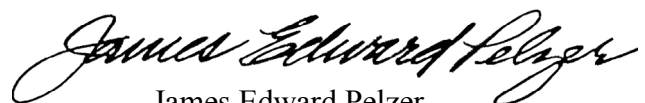
The defendant also contends that the Supreme Court erred in curtailing defense counsel's cross-examination of a witness called by the People. The Supreme Court properly sustained the prosecutor's objection to the form defense counsel used in his attempt to impeach the witness with a prior inconsistent statement (*see Richardson*, Evidence § 502 [Prince 10th ed]; *People v Wise*, 46 NY2d 321, 325; *Larkin v Nassau Elec. R.R., Co.*, 205 NY 267, 268-269; *People v Wilkins*, 221 AD2d 392, 393), and any further cross-examination of this witness on this particular matter was curtailed by defense counsel since he never revisited this matter. Also without merit are the defendant's arguments that he was improperly prevented from using a police report to refresh the witness's recollection (*see generally People v Neff*, 287 AD2d 809, 810; *People v Betts*, 272 App Div 2d 737, 738) and from questioning the witness about the alleged suggestiveness of a photographic array (*see People v Ross*, 208 AD2d 572).

The defendant's claim that he was deprived of his due process right to a fair trial when the court permitted the prosecutor to question him during cross-examination regarding a prior bad act is not preserved for appellate review, as the defendant failed to object to the alleged error at trial (*see CPL 470.05[2]*; *People v Johnson*, 45 AD3d 606). In any event, the prosecutor properly questioned the defendant regarding the alleged prior bad act during his cross-examination since the defendant opened the door to this line of questioning during his direct examination (*see People v Gagliardo*, 307 AD2d 934; *People v Gibbs*, 286 AD2d 865, 867). Likewise, the defendant's contention regarding a detective's testimony about information received from an informant is unpreserved for appellate review (*see CPL 470.05[2]*) and, in any event, without merit.

The defendant's remaining contention is without merit.

RIVERA, J.P., DILLON, COVELLO and ANGIOLILLO, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court