

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

919

KA 07-01565

PRESENT: SCUDDER, P.J., MARTOCHE, PERADOTTO, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MARGUERITE D. BORK, DEFENDANT-APPELLANT.

D.J. & J.A. CIRANDO, ESQS., SYRACUSE (JOHN A. CIRANDO OF COUNSEL), FOR DEFENDANT-APPELLANT.

SCOTT D. MCNAMARA, DISTRICT ATTORNEY, UTICA (STEVEN G. COX OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Oneida County Court (Barry M. Donalty, J.), rendered May 9, 2007. The judgment convicted defendant, upon a jury verdict, of murder in the second degree.

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

Memorandum: On appeal from a judgment convicting her, following a jury trial, of murder in the second degree (Penal Law § 125.25 [1]), defendant contends that the evidence is legally insufficient to support the conviction. Defendant made only a general motion for a trial order of dismissal at the close of the People's case and thus has failed to preserve her contention for our review (*see People v Gray*, 86 NY2d 10, 19). Defendant also failed to preserve for our review her contention concerning the misstatement of County Court in its jury instructions concerning a date in the indictment (*see People v Green*, 35 AD3d 1211, 1212, *lv denied* 8 NY3d 985), as well as her contention that she was denied a fair trial based on prosecutorial misconduct (*see People v Clark*, 281 AD2d 947, 947-948, *lv denied* 96 NY2d 860), and we decline to exercise our power to review those contentions as a matter of discretion in the interest of justice (*see CPL 470.15 [6] [a]*). We have reviewed defendant's remaining contentions and conclude that they are without merit.

Entered: October 1, 2010

Patricia L. Morgan
Clerk of the Court