

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

D12056  
E/hu

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Submitted - June 14, 2006

THOMAS A. ADAMS, J.P.  
GLORIA GOLDSTEIN  
STEVEN W. FISHER  
ROBERT A. LIFSON, JJ.

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2005-10500

DECISION & ORDER

The People, etc., respondent,  
v Johnny Miller, appellant.

(Ind. No. 65/04)

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Steven A. Feldman, Uniondale, N.Y., for appellant.

William V. Grady, District Attorney, Poughkeepsie, N.Y. (Heather A. Ryan of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Dutchess County (Hayes, J.), rendered October 12, 2005, convicting him of robbery in the first degree, upon his plea of guilty, and imposing sentence. The appeal brings up for review the denial, after a hearing, of that branch of the defendant's omnibus motion which was to suppress identification testimony.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the photo array from which the complainant identified the defendant was not unduly suggestive. A photographic display is suggestive when some characteristic of one picture draws the viewer's attention to it, indicating that the police have made a particular selection (*see People v Wright*, 297 AD2d 391; *People v Boria*, 279 AD2d 585, 586; *People v Robert*, 184 AD2d 597). An examination of the six-photograph array employed in this case reveals that the defendant's photograph did not have a significantly darker background and there were no other characteristics in the photograph that would draw the viewer's attention to the photograph.

October 10, 2006

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Furthermore, the defendant's appearance and facial expression did not differ greatly from those of the men in the other photographs (*see People v Ragunauth*, 24 AD3d 472; *People v Wright, supra*; *People v Williams*, 289 AD2d 270).

ADAMS, J.P., GOLDSTEIN, FISHER and LIFSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, looping initial "J".

James Edward Pelzer  
Clerk of the Court