

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

D12424
Y/hu

_____AD3d_____

Argued - September 18, 2006

DAVID S. RITTER, J.P.
GLORIA GOLDSTEIN
REINALDO E. RIVERA
ROBERT A. SPOLZINO, JJ.

2003-04626

DECISION & ORDER

The People, etc., respondent,
v Gus Bethea, appellant.

(Ind. No. 1237/02)

Daniel F. Lynch, New York, N.Y., for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Jovlove, Jodi L. Mandel, and Tziyonah M. Langsam of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Starkey, J.), rendered May 12, 2003, convicting him of robbery in the first degree (two counts), upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant has not preserved for appellate review his contention that the Supreme Court improperly failed to conduct a *Ventimiglia* hearing (*see People v Ventimiglia*, 52 NY2d 350) to determine the admissibility of certain testimony regarding a telephone call made by the defendant's friend to one of the complainants (*see CPL 470.05[2]*; *People v Gray*, 86 NY2d 10, 19; *People v Cody*, 149 AD2d 722). In any event, such testimony was properly introduced as some evidence of the defendant's consciousness of guilt (*see People v Plummer*, 36 NY2d 161, 163-164; *People v Almestica*, 288 AD2d 483; *People v Pitts*, 218 AD2d 715). Additionally, the Supreme Court gave the jury proper limiting instructions (*see People v Almestica, supra*).

The defendant was not denied his right to effective assistance of counsel (*see People v Benevento*, 91 NY2d 708, 714; *People v Baldi*, 54 NY2d 137, 147).

November 8, 2006

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The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

RITTER, J.P., GOLDSTEIN, RIVERA and SPOLZINO, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court