

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

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_____AD3d_____

Submitted - September 21, 2006

A. GAIL PRUDENTI, P.J.
WILLIAM F. MASTRO
STEVEN W. FISHER
ROBERT J. LUNN, JJ.

2003-05505

DECISION & ORDER

The People, etc., respondent,
v Christopher Tatum, appellant.

(Ind. No. 3656/02)

Lynn W. L. Fahey, New York, N.Y. (Alexis A. Ascher of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Rhea A. Grob of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Tomei, J.), rendered June 12, 2003, convicting him of murder in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

After conducting a *Geraci/Sirois* hearing (*see People v Geraci*, 85 NY2d 359, *cert denied* 531 US 1018; *Matter of Holtzman v Hellenbrand*, 92 AD2d 405), the trial court correctly determined that a previously cooperative eyewitness had been rendered unavailable due to threats made by the defendant's brother, at the defendant's initiative or acquiescence (*see People v Cotto*, 92 NY2d 68; *People v Geraci, supra*).

Moreover, the court correctly declined the defendant's request to submit manslaughter in the first degree as a lesser-included offense of intentional murder (*see People v Seabrooks*, 27 AD3d 494; *People v Moreno*, 16 AD3d 438).

PRUDENTI, P.J., MASTRO, FISHER and LUNN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

December 5, 2006

PEOPLE v TATUM, CHRISTOPHER