

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

D12906  
E/hu

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Submitted - October 16, 2006

HOWARD MILLER, J.P.  
GLORIA GOLDSTEIN  
PETER B. SKELOS  
STEVEN W. FISHER, JJ.

2004-04805

DECISION & ORDER

The People, etc., respondent,  
v Paul DiLeonardo, appellant.

(Ind. No. 2468/02)

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Lynn W. L. Fahey, New York, N.Y. (Bertrand J. Kahn of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,  
Nicoletta J. Caferri, and Annette B. Almazan of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Hanophy, J.), rendered May 18, 2004, convicting him of murder in the second degree, after a nonjury trial, and imposing sentence.

ORDERED that the judgment is affirmed.

Viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620), we find that it was legally sufficient to establish the defendant's guilt beyond a reasonable doubt.

Moreover, the Supreme Court's determination that the defendant failed to prove by a preponderance of the evidence that he was acting "under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse" when he stabbed and killed the victim was not against the weight of the evidence (Penal Law § 125.25[1][a]; *see* Penal Law § 125.20[2]; *People v Roche*, 98 NY2d 70; *People v Chambers*, 18 AD3d 571; *People v George*, 7 AD3d 810). The court reasonably concluded that the circumstances surrounding the commission of

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the crime were not indicative of a loss of self-control or similar mental infirmity (*see People v Roche, supra; People v Palacios*, 302 AD2d 540). Accordingly, the Supreme Court properly rejected the defendant's affirmative defense.

MILLER, J.P., GOLDSTEIN, SKELOS and FISHER, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court