

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

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_____AD3d_____

Argued - December 18, 2006

ROBERT A. SPOLZINO, J.P.
ANITA R. FLORIO
ROBERT A. LIFSON
JOSEPH COVELLO, JJ.

2003-06462

DECISION & ORDER

The People, etc., respondent,
v Troy Brown, appellant.

(Ind. No. 713/01)

Lynn W. L. Fahey, New York, N.Y. (Steven R. Bernhard of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John Castellano, Johnnette Traill, Jill Gross-Marks, and Edward Saslaw of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Hanophy, J.), rendered June 16, 2003, convicting him of murder in the second degree (four counts), upon a jury verdict, 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 physical evidence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the warrantless search of the knapsack found in his possession at the time of his arrest was proper because the search was incident to a lawful arrest (*see United States v Robinson*, 414 US 218; *People v Belton*, 55 NY2d 49, 52-53). Although the knapsack, which uncovered personal items belonging to one of the victims, was not searched immediately upon the defendant's arrest, the delay, while the defendant was being interviewed, was reasonable under the circumstances and, therefore, not a basis to suppress items that were recovered (*see United States v Johns*, 469 US 478; *United States v Edwards*, 415 US 800; *People v Ali*, 131 AD2d 857; *People v Jackson*, 111 AD2d 412).

The defendant's contention that a soiled bandage about to be discarded was wrongfully seized and should have been suppressed is without merit. The defendant sufficiently manifested an intent to abandon the old bandage by permitting EMS workers to put on a new bandage and discard the soiled one, which upon examination was found to contain DNA evidence linking the defendant to the crime (*see People v Ramirez-Portoreal*, 88 NY2d 99, 108; *People v Mora*, 259 AD2d 562; *United States v Cox*, 428 F2d 683).

SPOLZINO, J.P., FLORIO, LIFSON and COVELLO, 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