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

D13645
G/cb

_____AD3d_____ Argued - December 15, 2006

ROBERT W. SCHMIDT, J.P.
STEPHEN G. CRANE
PETER B. SKELOS
STEVEN W. FISHER, JJ.

2005-06157 DECISION & ORDER

The People, etc., respondent, v Temitope Odubogun, appellant.

(Ind. No. 8991/03)

Steven Banks, New York, N.Y. (Allen Fallek of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Camille O'Hara Gillespie, and Skadden, Arps, Slate, Meagher & Flom, LLP [Michael J. Balch] of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Starkey, J.), rendered June 14, 2005, convicting him of murder in the second degree and criminal possession of a weapon in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contentions regarding the prosecutor's reference during his opening statement to a witness who ultimately refused to testify, and regarding the admission of testimony of a detective that, after conducting interviews at the crime scene, he suspected the defendant of committing the murder and that he arrested the defendant after a witness viewed a lineup, are unpreserved for appellate review (*see People v Barboza*, 24 AD3d 460, 461; *People v Boatswain*, 8 AD3d 673, 674; *People v Thompson*, 276 AD2d 811).

In any event, the defendant's claims with respect to the opening statement and the testimony about when the defendant became a suspect are without merit (*see People v De Tore*, 34 NY2d 199, 207, *cert denied* 419 US 1025; *People v Nicholas*, 1 AD3d 614), and any error in the

admission of the testimony about the arrest after the lineup was harmless (*see People v Mobley*, 56 NY2d 584, 585).

The defendant was not deprived of the effective assistance of counsel. Counsel pursued a viable misidentification defense throughout the trial. Viewing the record as a whole, the defendant received meaningful representation (*see People v Henry*, 95 NY2d 563, 566; *People v Baldi*, 54 NY2d 137, 147).

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

SCHMIDT, J.P., CRANE, SKELOS and FISHER, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court