

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

D13722
C/hu

_____AD3d_____

Argued - January 2, 2007

HOWARD MILLER, J.P.
ROBERT A. SPOLZINO
DAVID S. RITTER
MARK C. DILLON, JJ.

2005-05699

DECISION & ORDER

The People, etc., respondent,
v Devon L. Howard, a/k/a Devon Howard, appellant.

(Ind. No. 2606/04)

Christopher Seeds, New York, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Tammy J. Smiley, Andre K. Cizmarik, and Anthony J. Viola of counsel; Alison Reuter on the brief), for respondent.

Appeal by the defendant from a judgment of the County Court, Nassau County (Sullivan, J.), rendered May 24, 2005, convicting him of robbery in the second degree (two counts), attempted robbery in the second degree, and menacing in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Upon the exercise of our factual review power, we are satisfied that the verdict of guilt was not against the weight of the evidence (*see* CPL 470.15[5]; *People v Romero*, 7 NY3d 633).

Furthermore, contrary to the defendant's contention, the defense counsel's failure to seek suppression of his statements to the police on the ground that his rights under *Payton v New York* (445 US 573) were violated did not establish ineffective assistance of counsel, since the motion was not warranted by the facts of this case and the defense counsel otherwise provided meaningful representation (*see People v Baldi*, 54 NY2d 137; *People v Coats*, 195 AD2d 519).

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

MILLER, J.P., SPOLZINO, RITTER and DILLON, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court