

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

D13859
G/cb

_____AD3d_____

Argued - January 12, 2007

ROBERT W. SCHMIDT, J.P.
STEPHEN G. CRANE
STEVEN W. FISHER
THOMAS A. DICKERSON, JJ.

2005-02988

DECISION & ORDER

The People, etc., respondent,
v David Robinson, appellant.

(Ind. No. 3504/04)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Camille O'Hara Gillespie of counsel; Andrew M. Pickett on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Collini, J.), rendered March 3, 2005, convicting him of burglary in the third degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the trial court providently exercised its discretion in replacing a sworn juror on the ground of illness. The record shows that the court made a "reasonably thorough inquiry" (CPL 270.35[2][a]) into the juror's unavailability, afforded the parties the opportunity to be heard, and placed the facts and reasons for its determination on the record (*see* CPL 270.35[2][b]; *People v Jeanty*, 94 NY2d 507, 516; *People v Shelton*, 31 AD3d 791, 791-792, *lv denied* 7 NY3d 851; *People v Merritt*, 299 AD2d 370, 370-371).

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

SCHMIDT, J.P., CRANE, FISHER and DICKERSON, 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