

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

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Argued - January 19, 2007

ROBERT W. SCHMIDT, J.P.  
REINALDO E. RIVERA  
JOSEPH COVELLO  
RUTH C. BALKIN, JJ.

2004-03925

DECISION & ORDER

The People, etc., respondent,  
v Gardy Jean-Baptiste, appellant.

(Ind. No. 5780/02)

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Lynn W. L. Fahey, New York, N.Y. (De Nice Powell of counsel), for appellant, and appellant pro se.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Rhea A. Grob, and Melissa T. Aoyagi of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Marrus, J.), rendered April 19, 2004, convicting him of murder in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that the trial court erred in denying his request for a missing-witness charge. The trial court properly denied this request for a missing-witness charge, as the uncalled witness was available to both parties and was not under the control of the People (*see People v Gonzalez*, 68 NY2d 424, 428-429; *People v Lammers*, 184 AD2d 733, 734).

The defendant's contention that the trial court gave an unbalanced interested witness charge by failing to charge that three of the People's witnesses were interested witnesses, while charging that the defendant was an interested witness as a matter of law, is unpreserved for appellate review, as the defendant did not object to the court's charge (*see CPL 470.05[2]*; *People v Harding*,

February 27, 2007

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266 AD2d 310; *People v Wilson*, 154 AD2d 566). In any event, the defendant's contention is without merit, as the charge was properly balanced (*see People v Agosto*, 73 NY2d 963, 967; *People v Lopez*, 1 AD3d 458, 459).

Contrary to the defendant's contention in his supplemental pro se brief, he was provided with meaningful representation (*see People v Benevento*, 91 NY2d 708, 714; *People v Baldi*, 54 NY2d 137, 147).

SCHMIDT, J.P., RIVERA, COVELLO and BALKIN, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer  
Clerk of the Court