

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

D14531
O/hu

_____AD3d_____

Argued - March 1, 2007

A. GAIL PRUDENTI, P.J.
STEVEN W. FISHER
EDWARD D. CARNI
WILLIAM E. McCARTHY, JJ.

2005-04747

DECISION & ORDER

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

(Ind. No. 15033/04)

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 Anthea H. Bruffee of counsel; Nicholas R. Farnolo on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (D'Emic, J.), rendered May 6, 2005, convicting him of assault in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the evidence was legally insufficient to support his conviction is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Gray*, 86 NY2d 10, 19). In any event, viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620), the jury could have found that the evidence established the elements of assault in the second degree. Contrary to the defendant's contention, the trial court properly admitted testimony about inculpatory statements made by the deceased victim during her struggle with the defendant as excited utterances (*see People v Edwards*, 47 NY2d 493, 496; *People v Brown*, 70 NY2d 513).

The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80, 85).

April 3, 2007

Page 1.

PEOPLE v CHUNG, DAVID

The defendant's remaining contention is without merit (*see People v Smith*, 278 AD2d 154).

PRUDENTI, P.J., FISHER, CARNI and McCARTHY, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court