

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

D15005  
X/cb

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Submitted - March 30, 2007

STEPHEN G. CRANE, J.P.  
ANITA R. FLORIO  
JOSEPH COVELLO  
DANIEL D. ANGIOLILLO, JJ.

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2004-08027

DECISION & ORDER

The People, etc., respondent,  
v Keith McDay, appellant.

(Ind. No. 148/03)

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Lynn W. L. Fahey, New York, N.Y. (Bertrand J. Kahn of counsel), for appellant, and appellant pro se.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Sholom J. Twersky, and Steve Pilnyak of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Collini, J.), rendered August 12, 2004, convicting him of burglary in the second degree and criminal possession of stolen property in the fifth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the Supreme Court did not improvidently exercise its discretion in declining to give an "expanded charge" on identification as requested by the defendant (*see People v Knight*, 87 NY2d 873, 874-875).

The defendant's contention in his supplemental pro se brief that the Supreme Court erred in admitting the complainant's 911 tape into evidence is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Mitchell*, 35 AD3d 507) and, in any event, is without merit (*see People v Bailey*, 12 AD3d 377; *People v Rodriguez*, 264 AD2d 690, 691).

May 8, 2007

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The defendant's remaining contentions raised in his supplemental pro se brief are without merit.

CRANE, J.P., FLORIO, COVELLO and ANGIOLILLO, 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