

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

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_____AD3d_____

Submitted - April 5, 2007

HOWARD MILLER, J.P.
DANIEL D. ANGIOLILLO
EDWARD D. CARNI
THOMAS A. DICKERSON, JJ.

2004-06471

DECISION & ORDER

The People, etc., respondent,
v Wayne Mathews, a/k/a Wayne Matthews, appellant.

(Ind. No. 5422/02)

Steven Banks, New York, N.Y. (Jeffrey Dellheim of counsel), for defendant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Phyllis Mintz of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Feldman, J.), rendered July 7, 2004, convicting him of murder in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the prosecutor's use of the redacted plea allocution of a codefendant requires reversal since it constituted a violation of the Confrontation Clause under *Crawford v Washington* (541 US 36) is without merit. While the Supreme Court erred in admitting the redacted allocution, which was not subject to cross-examination (*see People v Douglas*, 4 NY3d 777; *People v Hardy*, 4 NY3d 192; *People v Cioffi*, 24 AD3d 793; *People v F & S Auto Parts, Inc.*, 24 AD3d 795, 796; *People v White*, 24 AD3d 801, 802; *People v Muhammad*, 17 AD3d 139), the error was harmless since, "in light of the totality of the evidence, there is no reasonable possibility that

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the error affected the jury's verdict" (*People v Douglas, supra* at 779; see *People v Crimmins*, 36 NY2d 230, 240-241).

MILLER, J.P., ANGIOLILLO, CARNI and DICKERSON, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court