

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

D15803
W/gts

_____AD3d_____

Argued - June 4, 2007

ROBERT W. SCHMIDT, J.P.
GLORIA GOLDSTEIN
JOSEPH COVELLO
THOMAS A. DICKERSON, JJ.

2005-05458

DECISION & ORDER

The People, etc., respondent,
v Alfred Morson, appellant.

(Ind. No. 2223/03)

Lynn W. L. Fahey, New York, N.Y. (Julie A. Kleeman of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Jeanette Lifschitz, Rebecca Kramer, and Kristina Sapaskis of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (McGuire, J.), rendered April 26, 2005, convicting him of robbery in the second degree (two counts) and criminal possession of stolen property in the fifth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The trial court correctly denied the defendant's request to instruct the jury on the affirmative defense of duress (*see* Penal Law § 40.00), because even when viewing the evidence in the light most favorable to the defendant, no reasonable view of the evidence supported such a defense (*see People v Butts*, 72 NY2d 746, 750; *People v Watts*, 57 NY2d 299, 301). Contrary to the defendant's contention, no reasonable view of the evidence supported a finding that he was subjected to "the use or threatened imminent use of unlawful physical force upon him" (Penal Law § 40.00 [1]; *see People v Hai Guang Zheng*, 268 AD2d 443, 444; *People v Brown*, 68 AD2d 503, 512-513). Furthermore, the evidence clearly established that the defendant voluntarily put himself into a position where he could be subjected to any alleged duress (*see* Penal Law § 40.00 [2]; *People v*

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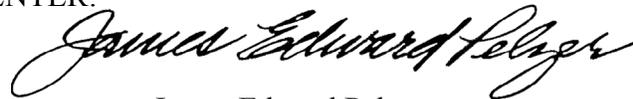
Amato, 99 AD2d 495, 496).

The defendant's contention regarding the legal sufficiency of the evidence supporting his conviction of one of the two counts of robbery in the second degree is unpreserved for appellate review (*see* CPL 470.05 [2]; *People v Gray*, 86 NY2d 10, 19-21).

The defendant's remaining contentions are without merit.

SCHMIDT, J.P., GOLDSTEIN, COVELLO and DICKERSON, 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