

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

D16132  
C/gts

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - June 8, 2007

ROBERT A. SPOLZINO, J.P.  
FRED T. SANTUCCI  
ANITA R. FLORIO  
DANIEL D. ANGIOLILLO, JJ.

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2005-06345

DECISION & ORDER

The People, etc., respondent,  
v Duvar Ayers, appellant.

(Ind. No. 04-329)

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Michael G. Paul, New City, N.Y., for appellant.

Michael E. Bongiorno, District Attorney, New City, N.Y. (Vered Adoni of counsel),  
for respondent.

Appeal by the defendant from a judgment of the County Court, Rockland County (Kelly, J.), rendered June 2, 2005, convicting him of criminal possession of a weapon in the third degree and criminal possession of a weapon in the fourth degree, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing, of that branch of the defendant's omnibus motion which was to suppress statements made by the defendant to law enforcement officials and physical evidence.

ORDERED that the judgment is affirmed.

The hearing court properly denied suppression of the contested statements on the ground that they were spontaneous and not made in response to express questioning or the functional equivalent thereof (*see People v Rivers*, 56 NY2d 476; *People v Eldridge*, 213 AD2d 667; *People v Davis*, 261 AD2d 411).

Contrary to the defendant's contention, the trial court's remarks during his attorney's opening statement did not constitute reversible error (*see People v Feliciano*, 254 AD2d 496; *People v Dukes*, 236 AD2d 484; *People v Concepcion*, 228 AD2d 204).

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The defendant received the effective assistance of counsel (*see People v Baldi*, 54 NY2d 137).

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

The defendant's contentions raised in Point II of his brief regarding suppression of physical evidence are without merit, and his remaining contentions are unpreserved for appellate review (*see* CPL 470.05[2]).

SPOLZINO, J.P., SANTUCCI, FLORIO and ANGIOLILLO, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court