

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

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_____AD3d_____

Submitted - September 7, 2007

ROBERT W. SCHMIDT, J.P.
REINALDO E. RIVERA
GABRIEL M. KRAUSMAN
ANITA R. FLORIO, JJ.

2004-04911

DECISION & ORDER

The People, etc., respondent,
v Jose Gonzalez, appellant.

(Ind. No. 4555/02)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Shulamit Rosenblum, and Maria Park of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Brennan, J.), rendered May 17, 2004, convicting him of attempted murder in the second degree and criminal possession of a weapon in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the admission of certain tape-recorded 911 calls into evidence violated his rights under the Confrontation Clause of the Sixth Amendment of the United States Constitution is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Mitchell*, 35 AD3d 507; *People v Cato*, 22 AD3d 863). Similarly, the defendant's claims that he was deprived of a fair trial by prosecutorial misconduct during summation are unpreserved for appellate review. We decline to review those contentions in the exercise of our interest of justice jurisdiction (*see* CPL 470.15[6][a]).

The defendant's remaining contention, raised in his supplemental pro se brief, that he was deprived of the effective assistance of counsel is based, in part, on matter dehors the record,

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which cannot be reviewed on direct appeal (*see People v Kadry*, 30 AD3d 440; *People v Johnson*, 30 AD3d 439). To the extent that we are able to review those claims, the defendant received the effective assistance of counsel (*see People v Benevento*, 91 NY2d 708; *People v Baldi*, 54 NY2d 137, 147).

SCHMIDT, J.P., RIVERA, KRAUSMAN and FLORIO, 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