

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

D16658
Y/cb

_____AD3d_____

Submitted - October 5, 2007

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
PETER B. SKELOS
THOMAS A. DICKERSON, JJ.

2002-10511

DECISION & ORDER

The People, etc., respondent,
v Divine Sawyer, appellant.

(Ind. No. 8949/01)

Mark Diamond, New York, N.Y., for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Anne C. Feigus of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (J. Goldberg, J.), rendered October 31, 2002, convicting him of murder in the first degree, attempted murder in the second degree, and criminal possession of a weapon in the second 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 his statements to law enforcement officials.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the Supreme Court providently exercised its discretion in making its *Sandoval* ruling (*see People v Sandoval*, 34 NY2d 371).

Moreover, the evidence supports the hearing court's determination that the defendant's statements were made after he knowingly and voluntarily waived his *Miranda* rights (*see Miranda v Arizona*, 384 US 436). The defendant's statements were not the product of any distress caused by a medical condition, as evinced by his lengthy delay in mentioning his medical condition to the police (*see People v Brown*, 5 AD3d 789; *People v Soto*, 295 AD2d 230).

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The defendant's contentions raised in Point 2 of his brief regarding the jury charge, and in Point 6 of his brief regarding alleged juror bias, are unpreserved for appellate review and, in any event, are without merit. The defendant's remaining contentions are without merit or do not require reversal.

SPOLZINO, J.P., SANTUCCI, SKELOS 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