

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

D16794  
O//kmg

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Submitted - October 16, 2007

HOWARD MILLER, J.P.  
DAVID S. RITTER  
FRED T. SANTUCCI  
RUTH C. BALKIN, JJ.

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2006-00682

DECISION & ORDER

The People, etc., respondent,  
v Anthony Cummings, appellant.

(Ind. No. 5/05)

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S. Kenneth F. Jones, Brooklyn, N.Y., for appellant.

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 (Marrus, J.), rendered December 22, 2005, convicting him of robbery in the first degree and criminal possession of stolen property in the fifth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's claim that the court should have charged robbery in the second degree as a lesser-included offense of robbery in the first degree is unpreserved for appellate review (*see* CPL 470.05[2]). In any event, there was no reasonable view of the evidence which would have supported a finding that the defendant committed the lesser but not the greater crime (*see People v Green*, 56 NY2d 427, 430; *People v Finn*, 180 AD2d 746, 747).

The defendant's contention that he was deprived of the right to effective assistance of counsel is without merit. "Here, the record demonstrates that the defense counsel effectively cross-examined the People's witnesses, delivered a cogent opening and closing statement, and presented a plausible defense" (*People v Groomell*, 256 AD2d 356, 357). Thus, the defendant was

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provided with meaningful representation. His claim that he was prevented by counsel from testifying concerns matter dehors the record and is not properly presented on direct appeal (*see People v Bennett*, 284 AD2d 338, *affd* 96 NY2d 898).

The defendant's remaining contention is unpreserved for appellate review and, in any event, is without merit.

MILLER, J.P., RITTER, SANTUCCI and BALKIN, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer  
Clerk of the Court