

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

D16927  
X/hu

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

Submitted - October 29, 2007

ROBERT A. SPOLZINO, J.P.  
DAVID S. RITTER  
JOSEPH COVELLO  
THOMAS A. DICKERSON, JJ.

---

2005-04768

DECISION & ORDER

The People, etc., respondent,  
v Jason LaConte, appellant.

(Ind. No. 1725/04)

---

Lynn W. L. Fahey, New York, N.Y. (Lisa Napoli of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Ellen C. Abbot, and Jessica L. Melton of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Rotker, J.), rendered May 10, 2005, convicting him of assault in the first degree, assault in the second degree (two counts), and criminal possession of a weapon in the fourth degree, after a nonjury trial, and imposing sentence.

ORDERED that the judgment is modified, on the law, by vacating the convictions of assault in the second degree (two counts) and the sentences imposed thereon, and dismissing those counts of the indictment; as so modified, the judgment is affirmed.

The defendant's contention that his waiver of the right to a jury trial was invalid is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Torres*, 24 AD3d 692; *People v Magnano*, 158 AD2d 979, *affd* 77 NY2d 941, *cert denied* 502 US 864). In any event, the record demonstrates that the defendant knowingly, voluntarily, and intelligently waived that right (*see People v Torres*, 24 AD3d at 692; *People v Hunter*, 237 AD2d 304, 305).

The defendant contends, and the People correctly concede, that the defendant's convictions of two counts of assault in the second degree must be vacated, and those counts of the

November 13, 2007

Page 1.

PEOPLE v LaCONTE, JASON

indictment dismissed, as they are inclusory concurrent counts of assault in the first degree (*see* CPL 300.30[4]; 300.40[3][b]; Penal Law § 120.05[1], [2]; § 120.10[1]; *People v DeFreitas*, 19 AD3d 506, 507).

SPOLZINO, J.P., RITTER, 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 with a large initial "J".

James Edward Pelzer  
Clerk of the Court