

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

D17286  
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Argued - November 26, 2007

HOWARD MILLER, J.P.  
STEPHEN G. CRANE  
MARK C. DILLON  
RUTH C. BALKIN, JJ.

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2006-00872

DECISION & ORDER

The People, etc., respondent,  
v Samuel Prashad, appellant.

(Ind. No. 3051/04)

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Steven Banks, New York, N.Y. (David Crow of counsel), and Paul, Weiss, Rifkind, Wharton & Garrison, LLP (David D. Lin and Jason C. Rubinstein of counsel), for appellant (one brief filed).

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Jeanette Lifschitz, and Kristina Sapaskis of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Roman, J.), rendered December 14, 2005, convicting him of assault in the second degree and criminal possession of a weapon in the fourth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, he was not denied a fair trial when the court permitted the prosecutor to question him regarding his failure to provide police officers with certain exculpatory information at the time of arrest. Generally, a defendant's post-arrest silence cannot be used for impeachment purposes (*see People v Conyers*, 52 NY2d 454, 459). However, where, as here, a defendant speaks to the police and omits exculpatory information which he presents for the first time at trial, the defendant may be impeached with the omission (*see People v Savage*, 50 NY2d 673, 676, 679, *cert denied* 449 US 1016; *People v Blacks*, 221 AD2d 351; *People v Spinelli*, 214 AD2d 135, 139-141; *People v West*, 212 AD2d 651, 652; *People v Harrison*, 149 AD2d 434, 434-435).

December 18, 2007

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

MILLER, J.P., CRANE, DILLON and BALKIN, 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