

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

D17642
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_____AD3d_____

Argued - December 4, 2007

ROBERT A. SPOLZINO, J.P.
DAVID S. RITTER
HOWARD MILLER
THOMAS A. DICKERSON, JJ.

2005-11065

DECISION & ORDER

The People, etc., respondent,
v Tracy Boyce, appellant.

(Ind. No. 2997/04)

Lynn W. L. Fahey, New York, N.Y. (Alexis A. Ascher of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Victor Barall of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Starkey, J.), rendered November 16, 2005, convicting him of 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 those branches of the defendant's omnibus motion which were to suppress his oral and videotaped statements to law enforcement officials.

ORDERED that the judgment is affirmed.

There is no merit to the defendant's contention that his alleged mental incapacity rendered the waiver of his *Miranda* rights (*see Miranda v Arizona*, 384 US 436) invalid and his statements to law enforcement officials involuntary (*see People v Williams*, 62 NY2d 285, 287). Accordingly, those branches of the defendant's omnibus motion which were to suppress his oral and videotaped statements to law enforcement officials were properly denied.

January 22, 2008

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The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

SPOLZINO, J.P., RITTER, MILLER and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court