

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

D17804
Y/kmg

_____AD3d_____

Submitted - December 18, 2007

REINALDO E. RIVERA, J.P.
DAVID S. RITTER
MARK C. DILLON
EDWARD D. CARNI, JJ.

2005-06342

DECISION & ORDER

The People, etc., respondent,
v Nicholas Zimmerman, appellant.

(Ind. No. 04-960)

Barry E. Warhit, White Plains, N.Y., for appellant, and appellant pro se.

Janet DiFiore, District Attorney, White Plains, N.Y. (Lois Cullen Valerio, Richard Longworth Hecht, and Anthony J. Servino of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Westchester County (DiBella, J.), rendered June 7, 2005, convicting him of bribery in the third degree, attempted escape in the first degree (three counts), promoting prison contraband in the first degree (five counts), and conspiracy in the fourth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's motion to sever his trial from that of his codefendant was untimely, as it was made after the commencement of trial (*see People v Bornholdt*, 33 NY2d 75, 87-88, *cert denied* 416 US 905; *People v Delacruz*, 289 AD2d 254, 355). In any event, while the granting of a mid-trial motion for severance is within the discretion of the trial court (*see People v Cruz*, 66 NY2d 61, 69, *cert denied* 476 US 1168), where proof against multiple defendants “is supplied by the same evidence, only the most cogent reasons warrant a severance” (*People v Bornholdt*, 33 NY2d 75, 87, *cert denied* 416 US 905; *see People v Mahboubian*, 74 NY2d 174, 184; *People v Islam*, 22 AD3d 599, 600; *People v Shodunke*, 12 AD3d 466). Under the circumstances presented here, the County Court providently exercised its discretion in denying the defendant’s motion for a severance (*see People v Watkins*, 10 AD3d 665, 666).

February 5, 2008

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The defendant's contentions raised in his supplemental pro se brief that the testimony of Investigator Darin Daughtry constituted improper bolstering and that the court erred in charging accessorial liability are unpreserved for appellate review. In any event, these contentions, as well as the remaining contentions raised in the defendant's supplemental pro se brief, are without merit.

RIVERA, J.P., RITTER, DILLON and CARNI, 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