

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

D18254
O/prt

_____AD3d_____

Submitted - January 31, 2008

REINALDO E. RIVERA, J.P.
HOWARD MILLER
MARK C. DILLON
ARIEL E. BELEN, JJ.

2005-03159

DECISION & ORDER

The People, etc., respondent,
v Confesor De Los Santos, appellant.

(Ind. No. 2605/03)

Bassett & Bassett, P.C., Central Islip, N.Y. (Kerry Sloane Bassett of counsel), for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Judith R. Sternberg and Laurie K. Gibbons of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Nassau County (Brown, J.) rendered November 3, 2004, convicting him of burglary in the second degree, upon his plea of guilty, and imposing sentence. The appeal brings up for review the denial, after a hearing (Donnino, J.), of that branch of the defendant's omnibus motion which was to suppress identification testimony and his statements to law enforcement officials.

ORDERED that the judgment is affirmed.

The voluntariness of the defendant's waiver of his *Miranda* rights (*see Miranda v Arizona*, 384 US 436) was unaffected by any alleged difficulty he might have had in understanding or communicating in the English language (*see People v Mora*, 36 AD3d 1142, 1143; *People v Restivo*, 226 AD2d 1106, 1107). The defendant's argument concerning the alleged suggestivity of the photo array displayed to a civilian witness is without merit (*see People v Leka*, 209 AD2d 723, 724). Accordingly, the County Court properly denied those branches of the defendant's omnibus motion which were to suppress the photo array.

March 4, 2008

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The defendant's remaining contention is without merit.

RIVERA, J.P., MILLER, DILLON and BELEN, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court