

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

D18616
Y/kmg

_____AD3d_____

Submitted - February 26, 2008

ROBERT A. SPOLZINO, J.P.
DAVID S. RITTER
FRED T. SANTUCCI
EDWARD D. CARNI, JJ.

2006-04047

DECISION & ORDER

The People, etc., respondent,
v Lyndon Johnson, appellant.

(Ind. No. 05-0804)

John De Chiaro, Larchmont, N.Y., for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (Hae Jin Liu, 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 April 4, 2006, convicting him of attempted robbery in the third degree, reckless endangerment in the second degree, unauthorized use of a motor vehicle, and criminal mischief in the fourth degree, after a nonjury trial, and imposing sentence. The appeal brings up for review the denial, after a hearing, of that branch of the defendant's omnibus motion which was to suppress his written statement made to law enforcement officials.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the hearing court properly denied that branch of his omnibus motion which was to suppress his written statement made to law enforcement officials. The hearing court properly determined that the defendant's written statement was voluntarily made after the defendant was advised of his *Miranda* rights (*see Miranda v Arizona*, 384 US 436). The hearing testimony of Detective Martinez, who questioned the defendant, supported the court's determination, as it was clear, consistent, and credible (*see People v Walker*, _____AD3d____ 2008 NY Slip Op 02624 [2d Dept 2008]). Moreover, there was no credible evidence that the defendant was coerced into signing his written statement (*see People v Miles*, 276 AD2d 566, 567; *People v Williams*, 226 AD2d 752, 753).

April 1, 2008

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Upon the exercise of our factual review power (*see* CPL 470.15[5]), we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633, 644-645; *People v Mateo*, 2 NY3d 383, 410, *cert denied* 542 US 946).

The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80, 85-86).

SPOLZINO, J.P., RITTER, SANTUCCI and CARNI, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court