

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

D19159  
O/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - April 11, 2008

WILLIAM F. MASTRO, J.P.  
PETER B. SKELOS  
ROBERT A. LIFSON  
JOHN M. LEVENTHAL, JJ.

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2005-03236

DECISION & ORDER

The People, etc., respondent,  
v Wayne Decker, appellant.

(Ind. No. 268/02)

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Ronald L. Kuby, New York, N.Y. (David Pressman of counsel), for appellant.

Daniel M. Donovan, Jr., District Attorney, Staten Island, N.Y. (Morrie I. Kleinbart and Anne Grady of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Richmond County (Rooney, J.), rendered March 31, 2005, convicting him of murder in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the trial court properly denied the defendant's motion to dismiss the indictment based on pre-indictment delay (*see People v Vernace*, 96 NY2d 886; *People v Taranovich*, 37 NY2d 442; *People v Jones*, 267 AD2d 250; *People v Brown*, 209 AD2d 233).

The trial court did not improvidently exercise its discretion in excluding evidence that another party may have committed the crime for which the defendant was being tried, as the evidence was purely speculative and would have caused undue delay, prejudice, and confusion (*see People v Olibencia*, 45 AD3d 607). The defendant's constitutional argument with respect to the court's exclusion of this evidence is not preserved for appellate review, and we decline to review it in the

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exercise of our interest of justice jurisdiction (*see People v Olibencia*, 45 AD3d 607).

The defendant's remaining contentions are without merit.

MASTRO, J.P., SKELOS, LIFSON and LEVENTHAL, 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