

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

D19962
C/prt

_____AD3d_____

Submitted - June 9, 2008

FRED T. SANTUCCI, J.P.
DANIEL D. ANGIOLILLO
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2006-11318

DECISION & ORDER

The People, etc., respondent,
v Jaroslaw Midura, appellant.

(Ind. No. 7280/05)

Lynn W. L. Fahey, New York, N.Y. (Erin R. Collins of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Rhea A. Grob, and Joseph T. Gasper II of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Mullen, J.), rendered November 28, 2006, convicting him of attempted robbery in the first degree and criminal possession of a weapon in the fourth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that he was deprived of his rights to confrontation and to a fair trial when the trial court denied his motion to admit into evidence a complete recording of a telephone call to the 911 police emergency number (hereinafter the recording). This contention is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Dombroff*, 44 AD3d 785, 787). Moreover, the defendant abandoned this argument because he never renewed his motion to admit the excluded portions of the recording, even though the trial court stated, at the time it denied his motion to admit the entire recording, that it would be willing to “revisit” the issue at a later time (*see People v Graves*, 85 NY2d 1024, 1027; *People v Leon-Ramos*, 28 AD3d 679, 679-680). In any

event, even assuming that the recording could be attributed to the complainant, contrary to the defendant’s contention, it was not inconsistent with the complainant’s trial testimony (*see People v*

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Jones, 136 AD2d 740, 741).

SANTUCCI, J.P., ANGIOLILLO, ENG and CHAMBERS, JJ., concur.

ENTER:

James Edward Pelzer
James Edward Pelzer
Clerk of the Court