

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

D20052  
Y/hu

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

Submitted - May 30, 2008

ANITA R. FLORIO, J.P.  
DANIEL D. ANGIOLILLO  
WILLIAM E. McCARTHY  
THOMAS A. DICKERSON, JJ.

---

2006-07358

DECISION & ORDER

The People, etc., respondent,  
v Ibrahim Moore, appellant.

(Ind. No. 8225/04)

---

Lynn W. L. Fahey, New York, N.Y. (David P. Greenberg of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Thomas M. Ross, and Helen M. Polyzos of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Chambers, J.), rendered March 2, 2006, convicting him of murder in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that he was deprived of a fair trial because the prosecution impeached its own witness is not preserved for appellate review (*see* CPL 470.05[2]). In any event, impeachment of the prosecution witness was proper (*see* CPL 60.35). Just before the witness was to testify to the events surrounding the defendant's shooting of the decedent, the prosecutor learned that the witness also intended to testify to the additional fact that about seven hours before the shooting, the decedent had put a gun to the defendant's head. The witness's credibility was properly impeached when the prosecutor elicited from this witness that he had not mentioned the earlier event in his statement to the police or to the District Attorney (*see People v Bornholdt*, 33 NY2d 75, *cert denied* 416 US 905; *see also People v Savage*, 50 NY2d 673, *cert denied* 449 US 1016).

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

The defendant's remaining contentions are without merit.

FLORIO, J.P., ANGIOLILLO, McCARTHY and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer  
Clerk of the Court