

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

D20109
O/prt

_____AD3d_____

Submitted - June 19, 2008

WILLIAM F. MASTRO, J.P.
MARK C. DILLON
RANDALL T. ENG
ARIEL E. BELEN, JJ.

2006-05916

DECISION & ORDER

The People, etc., respondent,
v Henry Jacobs, appellant.

(Ind. No. 6711/04)

Lynn W. L. Fahey, New York, N.Y. (Alexis A. Ascher of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Victor Barall of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Leventhal, J.), rendered June 6, 2006, convicting him of murder in the second 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 the Supreme Court erred in denying his *Batson* challenge (*see Batson v Kentucky*, 476 US 79) because the prosecutor's explanation for exercising a peremptory challenge with respect to a male juror was a pretext for gender discrimination. However, since the defendant raised no objection to the prosecutor's explanation for challenging that juror, his contention is unpreserved for appellate review (*see People v James*, 99 NY2d 264, 272; *People v Thompson*, 34 AD3d 852, 853; *People v Harris*, 294 AD2d 375; *People v Sumpter*, 286 AD2d 450, 452; *People v Santiago*, 272 AD2d 418).

In any event, the defendant's challenge was properly denied because he failed to satisfy his burden of demonstrating, under the third prong of the *Batson* analysis, that the facially gender-neutral explanation given by the prosecutor for challenging the male juror was a pretext for gender discrimination (*see People v Payne*, 88 NY2d 172, 181-183; *People v Allen*, 86 NY2d 101, 111;

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People v Thompson, 34 AD3d at 853; *People v Sumpter*, 286 AD2d at 452; *People v Sedney*, 254 AD2d 376).

MASTRO, J.P., DILLON, ENG and BELEN, 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