

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

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_____AD3d_____

Argued - October 17, 2008

WILLIAM F. MASTRO, J.P.
REINALDO E. RIVERA
JOSEPH COVELLO
JOHN M. LEVENTHAL, JJ.

2005-05316

DECISION & ORDER

The People, etc., respondent,
v Demetrius Williams, appellant.

(Ind. No. 7262/03)

Steven Banks, New York, N.Y. (Steven J. Miraglia of counsel), for appellant, and appellant pro se.

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 (Feldman, J.), rendered May 31, 2005, convicting him of murder in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Viewing the evidence in the light most favorable to the defendant, there is no reasonable view of the evidence that would have permitted the jury to find that the affirmative defense to the charge of felony murder (*see* Penal Law § 125.25[3]) was established by a preponderance of the evidence (*see People v Dillon*, 30 AD3d 1135, 1136; *People v McNeely*, 222 AD2d 611). Therefore, the trial court did not err in denying his request for such a charge (*see People v Butts*, 72 NY2d 746, 748-750; *People v Tucker*, 33 AD3d 635; *People v Caicedo*, 234 AD2d 379).

The defendant contends that he was deprived of his right to a fair trial by testimony that improperly suggested he intimidated a prosecution witness and a potential witness. However,

November 18, 2008

Page 1.

PEOPLE v WILLIAMS, DEMETRIUS

any error was harmless, as there was overwhelming evidence of the defendant's guilt, and no significant probability that the alleged error contributed to his conviction (*see People v Crimmins*, 36 NY2d 230; *People v Williams*, _____AD3d_____ [Appellate Division Docket No. 2005-05993, decided herewith]).

The contention raised in Point I of the defendant's supplemental pro se brief is unpreserved for appellate review and, in any event, is without merit, and the contention raised in Point II of the defendant's supplemental pro se brief is without merit.

MASTRO, J.P., RIVERA, COVELLO 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