

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

D21200
C/hu

_____AD3d_____

Argued - October 30, 2008

STEVEN W. FISHER, J.P.
RUTH C. BALKIN
WILLIAM E. McCARTHY
JOHN M. LEVENTHAL, JJ.

2004-01200

DECISION & ORDER

The People, etc., respondent,
v Tremaine Alexander, appellant.

(Ind. No. 638/03)

Mintz & Oppenheim, LLP, New York, N.Y. (Laura A. Oppenheim and Ronald Rubinstein of counsel), for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Robert A. Schwartz and Andrew Fukuda of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Nassau County (LaPera, J.), rendered January 30, 2004, convicting him of murder in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

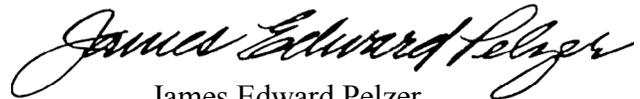
The defendant's contention that he was denied the effective assistance of counsel is without merit. "[W]hen reviewing claims of ineffective assistance of counsel, care must be taken to avoid confusing true ineffectiveness with mere losing tactics. The performance of counsel must be viewed without the benefit of hindsight, and if counsel provided meaningful representation in the context of the evidence, the law, and the circumstances of the particular case, the constitutional requirement will have been met" (*People v Butler*, 143 AD2d 140, 140-141; see *People v Satterfield*, 66 NY2d 796, 798-799; *People v Baldi*, 54 NY2d 137, 147). "It is incumbent on defendant to demonstrate the absence of strategic or other legitimate explanations for counsel's alleged shortcomings . . . As long as the defense reflects a reasonable and legitimate strategy under the circumstances and evidence presented, even if unsuccessful, it will not fall to the level of ineffective

assistance” (*People v Benevento*, 91 NY2d 708, 712-713). Here, defense counsel presented a reasonable strategy under the circumstances, delivered coherent opening and closing statements consistent with the defense theory, and effectively cross-examined the prosecution’s witnesses in accordance with that theory. Under the circumstances, we find that the defendant was afforded meaningful representation (*see People v Satterfield*, 66 NY2d at 799-800; *People v Cesario*, 157 AD2d 795, 796).

The defendant’s remaining contention is unpreserved for appellate review.

FISHER, J.P., BALKIN, McCARTHY 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