

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

D21213  
O/prt

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

Submitted - October 30, 2008

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

2006-11858

DECISION & ORDER

The People, etc., appellant,  
v Dennis Vlismas, respondent.

(Ind. No. 1515-06)

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Thomas J. Spota, District Attorney, Riverhead, N.Y. (Grazia DiVincenzo of counsel),  
for appellant.

Appeal by the People, as limited by a letter dated October 22, 2008, from so much of an order of the Supreme Court, Suffolk County (R. Doyle, J.), dated October 26, 2006, as granted that branch of the defendant's motion which was to dismiss the first count of the indictment charging him with attempted dissemination of indecent materials to a minor in the first degree.

ORDERED that the order is reversed insofar as appealed from, on the law, and that branch of the defendant's motion which was to dismiss the first count of the indictment charging the defendant with attempted dissemination of indecent materials to a minor in the first degree is denied.

After allegedly engaging in sexually explicit internet communications with an undercover police officer posing as a 14-year-old girl and attempting to meet with the fictitious minor, the defendant was arrested and indicted on charges of attempted dissemination of indecent material to minors in the first degree (count 1) and attempted rape in the second degree (count 2). The Supreme Court dismissed both charges, finding the evidence presented to the Grand Jury was legally insufficient to support them. It dismissed the first count of the indictment based on this Court's decision and order in *People v Kozlow* (46 AD3d 913). Thereafter, in *People v Kozlow* (8 NY3d 554), the Court of Appeals reversed this Court's decision and order, holding that a defendant could be convicted under Penal Law former § 235.22, which is applicable to the defendant's conduct here, even though his or her communications contained no nude or sexual images. Thus, that branch

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of the defendant's motion which was to dismiss the first count of the indictment should have been denied (*see People v Martoken*, 45 AD3d 782, 784).

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 with a large initial "J".

James Edward Pelzer  
Clerk of the Court