

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

D21988
G/kmg

_____AD3d_____

Argued - January 9, 2009

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
JOSEPH COVELLO
ARIEL E. BELEN, JJ.

2007-05429

DECISION & ORDER

The People, etc., respondent,
v Deomarine Ramjit, appellant.

(Ind. No. 2745/06)

Lynn W. L. Fahey, New York, N.Y. (Jonathan Garvin of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,
Johnnette Trull, and Danielle Hartman of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Kohm, J.), rendered May 8, 2007, convicting him of assault in the third degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that he was denied the effective assistance of counsel as a result of defense counsel's failure to pursue an intoxication defense. However, a defense of intoxication would have been inconsistent with the defendant's grand jury testimony that he had not consumed any alcohol before the incident. Instead, defense counsel argued during summation that the complainant's husband was responsible for the assault. This argument was consistent with the defendant's grand jury testimony, in which he denied any responsibility for the assault and placed the blame on the complaining witness's husband. It was entirely reasonable for counsel to pursue a defense consistent with defendant's prior statements (*see People v Gary*, 299 AD2d 960, 961; *People v Natal*, 102 AD2d 496, 504, *affd* 66 NY2d 802). Accordingly, the defendant was not denied the

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effective assistance of counsel as a result of defense counsel's decision not to pursue an intoxication defense (*see People v Benevento*, 91 NY2d 708, 712-713; *People v Gary*, 299 AD2d at 961).

MASTRO, J.P., FLORIO, COVELLO and BELEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court