

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

D22227
T/kmg

_____AD3d_____

Argued - January 26, 2009

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
DANIEL D. ANGIOLILLO
RANDALL T. ENG, JJ.

2006-10691

DECISION & ORDER

The People, etc., respondent,
v Herve Jeannot, appellant.

(Ind. No. 05-00167)

Aronwald & Pykett, White Plains, N.Y. (William I. Aronwald of counsel), for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Peter A. Weinstein and Laurie K. Gibbons of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Nassau County (Berkowitz, J.), rendered November 1, 2006, convicting him of murder in the first degree and criminal possession of a weapon in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is reversed, on the law, and the matter is remitted to the County Court, Nassau County, for a new trial.

The defendant was convicted of murder in the first degree and criminal possession of a weapon in the second degree. While cross-examining one of the investigating officers during the trial, defense counsel offered into evidence a statement implicating the defendant made to the police by another alleged participant in the crime. The defendant contends that, as a result, he was denied the effective assistance of trial counsel (*see* US Const, 6th Amend; NY Const, art I, § 6).

“To prevail on a claim of ineffective assistance of counsel, it is incumbent on defendant to demonstrate the absence of strategic or other legitimate explanations for counsel's failure” (*People v Rivera*, 71 NY2d 705, 709). Recognizing that in evaluating the defendant's claim we must “avoid

both confusing true ineffectiveness with mere losing tactics and according undue significance to retrospective analysis” (*People v Baldi*, 54 NY2d 137, 146), we nevertheless conclude that the defendant has satisfied that standard here by demonstrating that there was no strategic or other legitimate explanation for defense counsel's introduction into evidence of a statement that implicated the defendant, which would not otherwise have been admissible (*see Cruz v New York*, 481 US 186; *Bruton v United States*, 391 US 123; *People v Eastman*, 85 NY2d 265).

The defendant's remaining contention is without merit.

SPOLZINO, J.P., SANTUCCI, ANGIOLILLO and ENG, 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