

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

D22456
C/hu

_____AD3d_____

Argued - February 13, 2009

ROBERT A. SPOLZINO, J.P.
MARK C. DILLON
ANITA R. FLORIO
DANIEL D. ANGIOLILLO, JJ.

2007-11069

DECISION & ORDER

The People, etc., respondent,
v Wilbur Grant, appellant.

(Ind. No. 07-00226)

Larkin, Axelrod, Ingrassia & Tetenbaum, LLP, Newburgh, N.Y. (Dana M. Loiacono of counsel), for appellant.

Francis D. Phillips II, District Attorney, Goshen, N.Y. (Andrew R. Kass of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Orange County (Kiedaisch, J.), rendered November 16, 2007, convicting him of harassment in the second degree, after a nonjury trial, and imposing sentence.

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

Although the trial court is granted broad discretion in making evidentiary rulings precluding or admitting evidence addressing collateral issues (*see People v Aska*, 91 NY2d 979), “[a] court’s discretion . . . is circumscribed by the rules of evidence and the defendant’s constitutional right to present a defense” (*People v Carroll*, 95 NY2d 375, 385, citing *People v Hudy*, 73 NY2d 40, 57, abrogated on other grounds by *Carmell v Texas*, 529 US 513). “Proof aimed at establishing a motive to fabricate is never collateral and may not be excluded on that ground” (*People v Ocampo*, 28 AD3d 684, 685; *see People v Hudy*, 73 NY2d at 57; *People v Barney*, 277 AD2d 460, 461; *People v McKnight*, 144 AD2d 702, 703). Here, the excluded evidence—which included testimony as to statements the complainant was alleged to have made threatening to “get” the defendant—went

directly to the credibility of the complainant (*see People v Ocampo*, 28 AD3d at 686; *People v Ashner*, 190 AD2d 238, 247-248). Under the circumstances of this case, we cannot say the error was harmless (*see People v Crimmins*, 36 NY2d 230, 241; *People v Ocampo*, 28 AD3d at 686). Accordingly, the judgment must be reversed and a new trial ordered.

SPOLZINO, J.P., DILLON, FLORIO and ANGIOLILLO, 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