

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

D23018
O/prt

_____AD3d_____

Argued - March 27, 2009

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
FRED T. SANTUCCI
L. PRISCILLA HALL, JJ.

2008-08571

DECISION & ORDER

The People, etc., appellant,
v Jose Casiano Alonzo,
respondent.

(Ind. No. 07-01703)

Janet DiFiore, District Attorney, White Plains, N.Y. (Hae Jin Liu, Richard Longworth Hecht, and Anthony J. Servino of counsel), for appellant.

Stephen J. Pittari, White Plains, N.Y. (Joana Otaiza of counsel), for respondent.

Appeal by the People from an order of the County Court, Westchester County (Cohen, J.), dated June 10, 2008, which granted that branch of the defendant's omnibus motion which was to dismiss counts two and five of the indictment.

ORDERED that the order is affirmed.

An indictment is multiplicitous when two or more counts charge the same crime (*see People v Aarons*, 296 AD2d 508; *People v Nailor*, 268 AD2d 695, 696). The County Court properly dismissed counts two and five of the indictment as they were multiplicitous to counts one and four of the indictment. The conduct alleged in the dismissed counts essentially referred "to the same mental state, the same act, the same course of conduct, and the same victim," respectively (*People v Senisi*, 196 AD2d 376, 382).

May 5, 2009

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The People's remaining contentions are not properly before this Court on this appeal.

MASTRO, J.P., SKELOS, SANTUCCI and HALL, 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