

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

D23267
O/kmg

_____AD3d_____

Argued - April 17, 2009

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
ANITA R. FLORIO
RUTH C. BALKIN, JJ.

2006-05903

DECISION & ORDER

The People, etc., respondent,
v James Pallonetti, appellant.

(Ind. No. 7525/04)

Lynn W. L. Fahey, New York, N.Y. (Steven R. Bernhard of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Shulamit Rosenblum Nemeck of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Tomei, J.), rendered June 5, 2006, convicting him of murder in the second degree, criminal possession of a weapon in the second degree, criminal possession of a weapon in the third degree, and petit larceny, after a nonjury trial, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the Supreme Court did not improvidently exercise its discretion in failing to, sua sponte, order a competency examination. The defendant's responses to the court's inquiries were appropriate, and there is no basis in the record to support the conclusion that the defendant lacked the capacity to understand the proceedings against him, or that he was unable to assist in his defense (*see People v Tortorici*, 92 NY2d 757, 765-766, *cert denied* 528 US 834; *People v Gelikkaya*, 84 NY2d 456, 459-460; *People v Pryor*, 11 AD3d 565, 566). Moreover, the defendant was not denied the effective assistance of counsel because his attorney did not request a competency examination.

The defendant contends that rejection of his extreme emotional disturbance defense

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was against the weight of the evidence (*see* Penal Law § 125.25[1][a]). However, upon our independent review pursuant to CPL 470.15(5), we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

SPOLZINO, J.P., SANTUCCI, FLORIO and BALKIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court