

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

D24810
C/prt

_____AD3d_____

Submitted - October 5, 2009

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
THOMAS A. DICKERSON
PLUMMER E. LOTT, JJ.

2007-07914
2007-07915

DECISION & ORDER

The People, etc., respondent,
v Kirk Allenye, appellant.

(Ind. Nos. 1358/05, 7691/05)

Scott Brettschneider, P.C., Hempstead, N.Y. (Patrick Michael Megaro of counsel),
for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Anne C.
Feigus, and Terry-Ann Llewellyn of counsel), for respondent.

Appeals by the defendant from two judgments of the Supreme Court, Kings County (Hall, J.), both rendered July 23, 2007, convicting him of murder in the second degree under Indictment No. 7691/05, and assault in the first degree under Indictment No. 1358/05, upon his pleas of guilty, and imposing sentences. The appeal from the judgment rendered under Indictment No. 7691/05 brings up for review the denial, after a hearing, of that branch of the defendant's omnibus motion which was to suppress his oral and written statements to law enforcement officials.

ORDERED that the judgments are affirmed.

Contrary to the defendant's contention, the Supreme Court properly denied that branch of his omnibus motion which was to suppress his oral and written statements to law enforcement officials. As the defendant made clear that he did not wish to be represented by an attorney contacted by his mother, the Supreme Court correctly concluded that the defendant's right to counsel had not indelibly attached at the time that he made the statements (*see People v*

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Cunningham, 307 AD2d 366, 367; *People v Martino*, 259 AD2d 561, 562; *People v Lennon*, 243 AD2d 495, 497). Moreover, the Supreme Court properly determined that the defendant's statements, given after he was informed of, and waived, his *Miranda* rights (see *Miranda v Arizona*, 384 US 436), were voluntarily made (see *People v Latouche*, 61 AD3d 702; *People v Osorio*, 49 AD3d 562).

FISHER, J.P., COVELLO, DICKERSON and LOTT, 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