

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

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_____AD3d_____

Argued - December 22, 2009

FRED T. SANTUCCI, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2007-06449

DECISION & ORDER

The People, etc., respondent,
v Faruq Abdur-Rahman, appellant.

(Ind. No. 6542/06)

Lynn W. L. Fahey, New York, N.Y. (William Kastin of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Victor Barall, and Dominick Barbieri of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Chun, J.), rendered May 17, 2007, convicting him of murder in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

As the People correctly concede, the Supreme Court improperly admitted into evidence a photograph of the victim taken when he was alive, since this evidence was not relevant to any material fact to be proved at trial (*see People v Stevens*, 76 NY2d 833, 835; *People v Mills*, 48 AD3d 703; *People v Thompson*, 34 AD3d 852, 854; *People v Rodriguez*, 1 AD3d 386, 387; *People v Kershaw*, 238 AD2d 523). However, the error was harmless, as there was overwhelming evidence of the defendant's guilt (*see People v Adamo*, 309 AD2d 808; *People v Santiago*, 255 AD2d 63), and no significant probability that the error contributed to his convictions (*see People v Mills*, 48 AD3d 703; *People v Thompson*, 34 AD3d 852; *People v Foss*, 267 AD2d 505, 508).

As the People also correctly concede, it was improper for the trial court to permit

the People to impeach their own witness whose testimony did not tend to disprove a material issue of the case (*see* CPL 60.35; *People v Fitzpatrick*, 40 NY2d 44). However, that error too was harmless, as there was overwhelming evidence of the defendant's guilt, and no significant probability that the error contributed to his convictions (*see People v Murillo*, 256 AD2d 423, 424; *People v Comer*, 146 AD2d 794, 795; *People v Pelot*, 186 AD2d 158, 158).

SANTUCCI, J.P., DICKERSON, ENG and CHAMBERS, 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