

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

D25915
C/kmg

_____AD3d_____

Submitted - December 22, 2009

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

2006-07787

DECISION & ORDER

The People, etc., respondent,
v Stanislav Vandenko, appellant.

(Ind. No. 7885/03)

Lynn W. L. Fahey, New York, N.Y. (Jonathan M. Kratter of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Thomas M. Ross, and Carl D. Lesueur [Tannenbaum Helpern Syracuse & Hirschtritt LLP], of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Leventhal, J.), rendered July 19, 2006, convicting him of murder in the second degree, criminal possession of a weapon in the fourth degree, aggravated criminal contempt, and criminal contempt in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The Supreme Court correctly denied the defendant's request to charge manslaughter in the first degree (*see* Penal Law § 125.20[1]) as a lesser-included offense of the charge of murder in the second degree (*see* Penal Law § 125.25[1]). The evidence established that the defendant wrapped a television coaxial cable around the victim's neck three times and tied it tightly in a knot, causing her death. Viewed in the light most favorable to the defendant (*see People v Daniel*, 37 AD3d 731; *People v Hartman*, 4 AD3d 22, 25), there is no reasonable view of the evidence that would support a finding that he intended to cause the victim serious physical injury, but did not intend

to cause her death (*see* CPL 300.50[1]; *People v Seabrooks*, 27 AD3d 494; *People v Maldonado*, 5 AD3d 505; *People v Gauze*, 3 AD3d 538; *People v Crawford*, 231 AD2d 431, 432).

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

ENTER:

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

James Edward Pelzer
Clerk of the Court