

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

D25980
O/kmg

_____AD3d_____

Argued - January 7, 2010

STEVEN W. FISHER, J.P.
ANITA R. FLORIO
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2007-08907

DECISION & ORDER

The People, etc., respondent,
v Jose Tavarez, appellant.

(Ind. No. 952/05)

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

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,
Nicoletta J. Caferri, and Merri Turk Lasky of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Blumenfeld, J.), rendered September 12, 2007, convicting him of manslaughter in the first degree and criminal possession of a weapon in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's claim that the Supreme Court erred in submitting manslaughter in the first degree (*see* Penal Law § 125.20[1]) as a lesser-included offense of murder in the second degree (*see* Penal Law § 125.25[1]) is waived inasmuch as the defendant did not object to the submission of first-degree manslaughter before the jury retired to deliberate (*see* CPL 300.50[1]; *People v Mullins*, 13 AD3d 397; *People v Dunbar*, 145 AD2d 501, 502). In any event, a reasonable view of the evidence supports a finding that the defendant intended to cause serious physical injury rather than death (*see* CPL 300.50[1]; *People v Glover*, 57 NY2d 61, 64; *People v Pelsey*, 60 AD3d 1088; *People v Batts*, 244 AD2d 345; *People v Davis*, 181 AD2d 411, 411-412).

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The defendant's remaining contention is not preserved for appellate review and, in any event, is without merit.

FISHER, J.P., FLORIO, BELEN and AUSTIN, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court