

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

D26497
Y/ct

_____AD3d_____

Submitted - February 16, 2010

WILLIAM F. MASTRO, J.P.
JOHN M. LEVENTHAL
PLUMMER E. LOTT
LEONARD B. AUSTIN, JJ.

2005-07914

DECISION & ORDER

The People, etc., respondent,
v Akili El Machiah, appellant.

(Ind. No. 05-046)

Thomas T. Keating, White Plains, N.Y. (Joseph M. Angiolillo of counsel), for appellant.

Francis D. Phillips II, District Attorney, Goshen, N.Y. (Elizabeth L. Guinup and Andrew R. Kass of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Orange County (DeRosa, J.), rendered September 8, 2005, convicting him of arson in the third degree and attempted assault in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the trial court erred in permitting a fire investigation expert to opine that a fire was intentionally set is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Gssime*, 269 AD2d 605; *People v Champion*, 247 AD2d 901). In any event, the evidence of the defendant's guilt, without reference to the alleged error, was overwhelming, and there is no significant probability that the alleged error might have contributed to the defendant's conviction. Thus, any error was harmless (*see People v Crimmins*, 36 NY2d 230, 237; *People v Adams*, 43 AD3d 1423, 1424; *People v Narrod*, 23 AD3d 1061, 1062).

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The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

The defendant's remaining contentions are without merit.

MASTRO, J.P., LEVENTHAL, LOTT and AUSTIN, 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