

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

D12324
O/cb

_____AD3d_____

Argued - September 8, 2006

ROBERT W. SCHMIDT, J.P.
FRED T. SANTUCCI
STEVEN W. FISHER
JOSEPH COVELLO, JJ.

2002-10713

DECISION & ORDER

The People, etc., respondent,
v Michael Kneitel, appellant.

(Ind. No. 5818/01)

Lynn W. L. Fahey, New York, N.Y. (Warren S. Landau of counsel), for appellant,
and appellant to pro se.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Thomas
M. Ross of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Tomei, J.), rendered November 14, 2002, convicting him of criminal possession of a weapon in the second degree, criminal possession of a weapon in the third degree (14 counts), menacing in the third degree, and endangering the welfare of a child, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing (Pincus, J.), of that branch of the defendant's omnibus motion which was to suppress certain physical evidence.

ORDERED that the judgment is affirmed.

The defendant contends that the trial court erred in denying his application to re-open the pretrial suppression hearing. A court may re-open a hearing during trial where, inter alia, the defendant makes a showing "that additional pertinent facts have been discovered by the defendant which he [or she] could not have discovered with reasonable diligence before the determination of the [original suppression] motion" (CPL 710.40[4]). Here, the additional facts concerned the location where the defendant parked his car prior to his arrest. Since this was a fact of which the

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defendant is presumed to have knowledge, the application to re-open the hearing was properly denied (see *People v Young*, 278 AD2d 437; *People v Hankins*, 265 AD2d 572).

The issue of legal sufficiency is unpreserved for appellate review and the defendant's remaining contentions are without merit or do not require reversal.

SCHMIDT, J.P., SANTUCCI, FISHER and COVELLO, 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