

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

D12991
C/hu

_____AD3d_____

Submitted - October 31, 2006

ROBERT W. SCHMIDT, J.P.
DAVID S. RITTER
ROBERT J. LUNN
JOSEPH COVELLO, JJ.

2004-02920

DECISION & ORDER

The People, etc., respondent,
v Darryl Gray, appellant.

(Ind. No. 69/01)

Lynn W. L. Fahey, New York, N.Y. (M. Chris Fabricant of counsel), for appellant,
and appellant pro se.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,
Sharon Y. Brodt, and William H. Branigan of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Donnino, J.), rendered March 29, 2004, convicting him of robbery in the first degree (nine counts), and criminal possession of stolen property in the fifth degree, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing (Dunlop, J.), of those branches of the defendant's omnibus motion which were to suppress identification testimony, physical evidence, and his statements to law enforcement officials.

ORDERED that the judgment is affirmed.

The detective who detained the defendant had reasonable suspicion to do so based upon, inter alia, the contents of a police dispatcher's radio broadcast providing a general description of the perpetrator which matched the description of the defendant, information that the detective had regarding a series of robberies with a similar pattern, and the short passage of time between the commission of the crime and the observation of the defendant (*see People v Green*, 10 AD3d 664; *People v Holland*, 4 AD3d 375, 376; *People v Ferguson*, 222 AD2d 693, 694). Accordingly, the Supreme Court properly denied those branches of the defendant's omnibus motion which were to suppress identification testimony, physical evidence, and his statements to law enforcement officials.

December 12, 2006

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The defendant's contention that his counsel was ineffective in failing to conduct a proper investigation may not be reviewed on this appeal since it is based on alleged facts dehors the record (*see People v Velazquez*, 21 AD3d 388; *People v Marsh*, 230 AD2d 754, 755).

The defendant's remaining contentions, including those raised in his supplemental pro se brief, are without merit.

SCHMIDT, J.P., RITTER, LUNN 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