

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

D13726  
G/cb

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - January 8, 2007

HOWARD MILLER, J.P.  
ANITA R. FLORIO  
MARK C. DILLON  
DANIEL D. ANGIOLILLO, JJ.

---

2005-07938

DECISION & ORDER

The People, etc., respondent,  
v Nick Tordella, appellant.

(Ind. No. 1488/04)

---

Rochman Platzer Fallick Sternheim Luca & Pearl, LLP, New York, N.Y. (Barry M. Fallick and Jillian S. Harrington of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Thomas S. Burke, and Maria Park of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Feldman, J.), rendered July 13, 2005, convicting him of criminal possession of a dangerous weapon in the first degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The Supreme Court properly denied, without a hearing, the defendant's motion to controvert the two search warrants issued. The defendant failed to make the necessary substantial preliminary showing that the warrants were based upon affidavits containing false statements made knowingly or intentionally or with reckless disregard for the truth (*see Franks v Delaware*, 438 US 154; *People v Alfinito*, 16 NY2d 181, 186; *People v Novick*, 293 AD2d 692). In any event, apart from the challenged statements, the remaining facts presented to the issuing magistrate were sufficient to establish probable cause for the searches (*see People v Tambe*, 71 NY2d 492). The defendant's claim that the initial warrant application did not satisfy the *Aguilar-Spinelli* test (*see Aguilar v Texas*, 378 US 108; *Spinelli v United States*, 393 US 410) is without merit. The confidential informant appeared before the issuing magistrate, was sworn, and provided information supporting probable

cause for the issuance of the search warrant. Under those circumstances, *Aguilar-Spinelli* is inapplicable (see *People v Taylor*, 73 NY2d 683; *People v Small*, 22 AD3d 509; *People v Pratt*, 266 AD2d 318).

MILLER, J.P., FLORIO, DILLON and ANGIOLILLO, 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