

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

D13735
X/hu

_____AD3d_____

Argued - January 4, 2007

STEPHEN G. CRANE, J.P.
REINALDO E. RIVERA
GLORIA GOLDSTEIN
EDWARD D. CARNI, JJ.

2005-05325

DECISION & ORDER

The People, etc., respondent,
v Dean Bennett, appellant.

(Ind. No. 2834/04)

Howard Schwartz, Brooklyn, N.Y., for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Jodi L. Mandel, and Helen M. Polyzos of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Del Giudice, J.), rendered May 25, 2005, convicting him of assault in the second degree, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing, of that branch of the defendant's omnibus motion which was to suppress identification testimony.

ORDERED that the judgment is affirmed.

The police had reasonable suspicion to pursue, stop, and detain the defendant based upon the contents of a police dispatcher's radio broadcast providing a general description of the perpetrator which matched the description of the defendant, the close proximity of the defendant to the site of the crime, and the short passage of time between the commission of the crime and the observation of the defendant (*see People v Gil*, 21 AD3d 1120, 1121; *People v Blak*, 6 AD3d 301, 302; *People v Holland*, 4 AD3d 375, 376). The defendant was found wearing a "Raiders" jacket with a specific emblem on the back, which the radio description indicated the perpetrator was wearing (*see People v Ferguson*, 5 AD3d 250, 251). Additionally, the showup procedure, which was conducted in close spatial and temporal proximity to the commission of the crime for the purpose of

securing a prompt and reliable identification, was not unduly suggestive (*see People v Duuvon*, 77 NY2d 541, 544; *People v Gilyard*, 32 AD3d 1046; *People v Holland*, *supra*).

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

The defendant's remaining contention does not require a new trial.

CRANE, J.P., RIVERA, GOLDSTEIN and CARNI, 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