

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

D15061  
G/cb

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

Argued - April 9, 2007

STEPHEN G. CRANE, J.P.  
GABRIEL M. KRAUSMAN  
ROBERT A. LIFSON  
RUTH C. BALKIN, JJ.

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2005-01726

DECISION & ORDER

The People, etc., respondent,  
v Abdias Barnwell, appellant.

(Ind. No. 2351/04)

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Lynn W. L. Fahey, New York, N.Y. (Julie A. Kleeman of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Sholom J. Twersky, and Davis Polk & Wardwell [Jonathan D. Martin] of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Carroll, J.), rendered February 15, 2005, convicting him of criminal possession of a controlled substance in the fourth degree, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing, of the defendant's motion to suppress physical evidence.

ORDERED that the judgment is affirmed.

The hearing court properly denied the defendant's motion to suppress physical evidence. The defendant's argument that the arresting officer's testimony was incredible as a matter of law is unpreserved for appellate review because he did not raise this specific contention before the suppression court (*see* CPL 470.05[2]; *People v Butler*, 293 AD2d 686, 687; *see generally* *People v Udzinski*, 146 AD2d 245). In any event, the record supported the "conclusion that the defendant's conduct evidenced a calculated strategy to rid himself of incriminating evidence" (*People v Harper*, 32 AD3d 16, 20, *affd* 7 NY3d 882; *see People v Murray*, 247 AD2d 410).

May 8, 2007

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Any error in the trial court's preclusion of the defendant's attorney from questioning two of the police witnesses about alleged prior inconsistent statements contained in certain documents prepared by one of them was harmless beyond a reasonable doubt (*see People v Crimmins*, 36 NY2d 230, 237; *People v Rosario*, 267 AD2d 73).

CRANE, J.P., KRAUSMAN, LIFSON and BALKIN, 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