

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

D16356
C/kmg

_____AD3d_____

Argued - September 6, 2007

A. GAIL PRUDENTI, P.J.
FRED T. SANTUCCI
STEVEN W. FISHER
DANIEL D. ANGIOLILLO, JJ.

2004-03965

DECISION & ORDER

The People, etc., respondent,
v Kanares Deans, appellant.

(Ind. No. 880/03)

Lynn W. L. Fahey, New York, N.Y. (William Kastin of counsel), for appellant, and appellant pro se.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Johnnette Traill, Jeanette Lifschitz, and Kristina Sapaskis of counsel; Panita Phanichayakarn on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Aloise, J.), rendered April 19, 2004, convicting him of robbery in the first 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.

Contrary to the defendant's contention, the photo array that was shown to the complainant was not unduly suggestive (*see People v Killimayer*, 40 AD3d 1118, *lv denied* 9 NY3d 866; *People v Dunlap*, 9 AD3d 434, 435). Moreover, the pretrial lineup was not impermissibly suggestive, as there is no requirement that a defendant stand in a lineup with people of nearly identical appearance (*see People v Chipp*, 75 NY2d 327, 335; *People v Washington*, 40 AD3d 1156). Accordingly, the hearing court properly declined to suppress the identification testimony of the complainant, who had identified the defendant from the photo array.

October 2, 2007

PEOPLE v DEANS, KANARES

Page 1.

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

PRUDENTI, P.J., SANTUCCI, FISHER and ANGIOLILLO, 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