

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

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Y/hu

_____AD3d_____

Argued - September 20, 2007

STEPHEN G. CRANE, J.P.
ANITA R. FLORIO
ROBERT A. LIFSON
EDWARD D. CARNI, JJ.

2006-08315

DECISION & ORDER

The People, etc., appellant,
v Carlos Martinez, respondent.

(Ind. No. 10745/05)

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Nicoletta J. Caferra, Delayne L. Austin, and Edward D. Saslaw of counsel), for appellant.

Murray Richman, Bronx, N.Y. (Stacey Richman of counsel), for respondent.

Appeal by the People from an order of the Supreme Court, Queens County (Grosso, J.), dated May 2, 2006, which, after a hearing, granted that branch of the defendant's omnibus motion which was to suppress physical evidence.

ORDERED that the order is affirmed.

In its suppression ruling, the court found the officer's testimony regarding the circumstances of the traffic stop to be incredible. Specifically, the court found the officer's demeanor "evasive," and explained that the officer "equivocated" during part of his testimony. "The resolution of issues of credibility made by a hearing court are entitled to great deference on appeal, and will not be disturbed unless they are manifestly erroneous" (*People v Sutherland*, 40 AD3d 890, 891; *see People v Collier*, 35 AD3d 628, 629; *People v Ortiz*, 31 AD3d 580).

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In any event, there was no justification for the police seizing contraband, which was not in plain view, from the defendant's vehicle (*see People v Torres*, 74 NY2d 224, 226-227; *cf. People v Romeo*, 15 AD3d 420).

CRANE, J.P., FLORIO, LIFSON 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