

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

D17281
W/kmg

_____AD3d_____

Submitted - November 15, 2007

HOWARD MILLER, J.P.
DAVID S. RITTER
ANITA R. FLORIO
MARK C. DILLON, JJ.

2002-11207

DECISION & ORDER

The People, etc., respondent,
v Panagiotis Souris, a/k/a Peter Souris, appellant.

(Ind. No. 01-01418)

Abraham J. Mayers, Yonkers, N.Y., for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (William C. Milaccio, Richard Longworth Hecht, and Anthony J. Servino of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Westchester County (Adler, J.), rendered December 6, 2002, convicting him of criminal possession of a controlled substance in the third degree and failure to wear a safety belt in violation of Vehicle and Traffic Law § 1229-c(3), upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing (Smith, J.), of that branch of the defendant's omnibus motion which was to suppress physical evidence.

ORDERED that the judgment is affirmed.

“The credibility determinations of a hearing court are accorded great deference on appeal, and will not be disturbed unless clearly unsupported by the record” (*People v Umadat*, 29 AD3d 830; *People v Cameron*, 6 AD3d 546; *People v Jakins*, 277 AD2d 328). The record supports the hearing court's determination to credit the testimony of a state trooper that he was able to observe that the defendant was not wearing a safety belt in violation of Vehicle and Traffic Law § 1229-c(3) (*see People v Umadat*, 29 AD3d 830; *People v James*, 19 AD3d 617, 618). This observation, as distinguished from mere pretext (*see People v David*, 223 AD2d 551; *People v Smith*, 181 AD2d 802, 803), justified the trooper's stop of the vehicle (*see Whren v United States*, 517 US

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806, 810; *People v Robinson*, 97 NY2d 341, 349; *People v Robinson*, 38 AD3d 572, 573). Accordingly, the hearing court properly denied that branch of the defendant's omnibus motion which was to suppress physical evidence.

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