

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

D17396  
W/kmg

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Submitted - December 3, 2007

STEPHEN G. CRANE, J.P.  
REINALDO E. RIVERA  
ANITA R. FLORIO  
RUTH C. BALKIN, JJ.

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2000-10333

DECISION & ORDER

The People, etc., respondent,  
v Ishawn Pitts, appellant.

(Ind. No. 1954/00)

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William L. Ostar, Rockville Centre, N.Y., for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Shulamit Rosenblum of counsel; Seth Zuckerman on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Carroll, J.), rendered November 8, 2000, 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 hearing court properly denied that branch of his omnibus motion which was to suppress identification testimony. With regard to the lineup conducted on February 25, 2000, upon our examination of the lineup photograph, we agree with the hearing court that this lineup was not unduly suggestive (*see People v Chipp*, 75 NY2d 327, 336, *cert denied* 498 US 833; *People v Richards*, 2 AD3d 883). Moreover, as to the lineup conducted on August 16, 2000, although the photograph provided to this Court does not accurately depict that lineup, the other testimony and evidence in the record demonstrate that the procedures utilized were not impermissibly suggestive (*see People v Brennan*, 222 AD2d 445).

December 26, 2007

Page 1.

PEOPLE v PITTS, ISHAWN

The defendant's remaining contentions are without merit.

CRANE, J.P., RIVERA, FLORIO 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