

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

D17902
G/kmg

_____AD3d_____

Submitted - January 10, 2008

ROBERT A. SPOLZINO, J.P.
HOWARD MILLER
MARK C. DILLON
WILLIAM E. McCARTHY, JJ.

2006-07077

DECISION & ORDER

The People, etc., respondent,
v Gessley Olivier, appellant.

(Ind. No. 4658/05)

Steven Banks, New York, N.Y. (Sheilah Fernandez of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Sholom J. Twersky of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Holdman, J.), rendered June 15, 2006, convicting him of criminal possession of a weapon in the third degree, upon his plea of guilty, and imposing sentence. The appeal brings up for review the denial, after a hearing (Brennan, J.), of that branch of the defendant's omnibus motion which was to suppress physical evidence.

ORDERED that the judgment is affirmed.

Contrary to the People's contention, the defendant's waiver of his right to appeal was ineffective, as there is no indication in the record "that defendant understood the distinction between the right to appeal and other trial rights forfeited incident to a guilty plea" (*People v Moyett*, 7 NY3d 892, 893; *see People v Lopez*, 6 NY3d 248, 257; *People v Shemack*, 40 AD3d 890).

According great deference to the credibility determinations of the hearing court (*see People v Rivera*, 27 AD3d 489, 490; *People v Bell*, 18 AD3d 881), based upon the evidence adduced at the suppression hearing, we find no error in the hearing court's determination (*see People v Little*,

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309 AD2d 767; *United States v McFadden*, 238 F3d 198, *cert denied* 534 US 898).

SPOLZINO, J.P., MILLER, DILLON and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, looping initial "J".

James Edward Pelzer
Clerk of the Court