

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

D18845  
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Argued - March 13, 2008

ROBERT A. LIFSON, J.P.  
ANITA R. FLORIO  
DANIEL D. ANGIOLILLO  
CHERYL E. CHAMBERS, JJ.

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2007-05202

DECISION & ORDER

The People, etc., appellant,  
v Elvis Silvestry, respondent.

(Ind. No. 2337/06)

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

Sally Butler, Bayside, N.Y., for respondent.

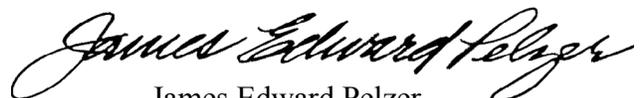
Appeal by the People from an order of the Supreme Court, Queens County (Aloise, J.), dated April 18, 2007, which, after a hearing, granted that branch of the defendant's omnibus motion which was to suppress physical evidence.

ORDERED that the order is affirmed.

Contrary to the People's contention, the police officer did not have reasonable suspicion to believe that the defendant had committed or was about to commit a crime to justify a stop and frisk the defendant (*see People v Martinez*, 80 NY2d 444, 447; *People v DeBour*, 40 NY2d 210, 223; *People v Stevenson*, 7 AD3d 820; *cf. People v Alston*, 23 AD3d 487, 488). Accordingly, the Supreme Court properly granted that branch of the defendant's omnibus motion which was to suppress physical evidence.

LIFSON, J.P., FLORIO, ANGIOLILLO and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

April 15, 2008

PEOPLE v SILVESTRY, ELVIS