

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

D19448  
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Argued - April 28, 2008

REINALDO E. RIVERA, J.P.  
JOSEPH COVELLO  
DANIEL D. ANGIOLILLO  
WILLIAM E. McCARTHY, JJ.

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2007-08555

DECISION & ORDER

The People, etc., appellant,  
v Jasmin Crespi, respondent.

(Ind. No. 07-00242)

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Francis D. Phillips II, District Attorney, Goshen, N.Y. (David R. Huey and Andrew R. Kass of counsel), for appellant.

Michael H. Sussman, Goshen, N.Y., for respondent.

Appeal by the People from so much of an order of the County Court, Orange County (Freehill, J.), dated August 20, 2007, as, upon the defendant's omnibus motion, dismissed count one of the indictment charging assault in the second degree on the ground that Penal Law § 120.05(10) is unconstitutional.

ORDERED that the order is reversed insofar as appealed from, on the law, and the matter is remitted to the County Court, Orange County, for further proceedings in accordance herewith.

Under the facts of this case, the County Court should not have passed upon the constitutionality of Penal Law § 120.05(10) without first providing notice to the State Attorney General, as required by CPLR 1012(b) and Executive Law § 71. Accordingly, we remit the matter to the County Court, Orange County, for a new determination on the issue of whether count one of

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the indictment should be dismissed on the ground that Penal Law § 120.05(10) is unconstitutional, after notice is provided to the State Attorney General in accordance with CPLR 1012(b) and Executive Law § 71, and the submission of further briefs on the issue (*see Lanz v Feola*, 181 AD2d 1053).

RIVERA, J.P., COVELLO, ANGIOLILLO and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court