

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

D21495
Y/prt

_____AD3d_____

Argued - November 14, 2008

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2006-09083

DECISION & ORDER

The People, etc., respondent,
v Reginald Gousse, appellant.

(Ind. No. 7752/05)

Lynn W. L. Fahey, New York, N.Y. (Paul Skip Laisure of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Rhea A. Grob, and Terry-Ann Llewellyn of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Lott, J.), rendered September 7, 2006, convicting him of robbery in the third degree (two counts) and criminal impersonation in the first degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, evidence of his prior conviction for robbery was properly admitted to establish his identity as the perpetrator of the instant crimes (*see People v Ventimiglia*, 52 NY2d 350; *People v Molineux*, 168 NY 264). Here, a unique modus operandi was sufficiently established, and the Supreme Court properly found that the similarity between the crimes was probative of the defendant's identity (*see People v Gousse*, 43 AD3d 958; *People v Sanabria*, 266 AD2d 41; *People v Delarosa*, 218 AD2d 667). Given the court's limiting instructions, the probative value of this evidence outweighed the potential prejudice to the defendant (*see People v Balazs*, 258 AD2d 658; *People v Caban*, 224 AD2d 705).

The defendant's contention that the evidence that he planned to rob a drug seller was improperly admitted because it was not sufficiently similar to the instant crimes is both waived and

unpreserved for appellate review (*see* CPL 470.05[2]; *People v Molina*, 241 AD2d 329; *People v Wilson*, 225 AD2d 642).

MASTRO, J.P., FLORIO, ENG and CHAMBERS, 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