

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

D22292  
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Argued- January 29, 2009

REINALDO E. RIVERA, J.P.  
STEVEN W. FISHER  
JOHN M. LEVENTHAL  
CHERYL E. CHAMBERS, JJ.

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2007-10260

DECISION & ORDER

The People, etc., respondent,  
v Eric Rhodes, appellant.

(Ind. No. 1950/05)

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Lynn W. L. Fahey, New York, N.Y. (Warren S. Landau of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Jeanette Lifschitz, and Danielle Hartman of counsel; Joshua Schlenger on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Cooperman, J.), rendered September 11, 2007, convicting him of criminal possession of a weapon in the third degree (two counts) and unlawful possession of marijuana, after a nonjury trial, and imposing sentence. The appeal brings up for review the denial, after a hearing (Aloise, J.), of the defendant's motion to suppress physical evidence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the court did not improvidently exercise its discretion in denying his motion, made during trial, to reopen the pretrial suppression hearing inasmuch as the defendant failed to show that he had discovered additional pertinent facts which he could not have discovered with reasonable diligence before the determination of the motion and which would have materially affected that determination (*see* CPL 710.40[4]; *People v Clark*, 88 NY2d 552, 555; *People v Fuentes*, 53 NY2d 892; *cf. People v Velez*, 39 AD3d 38).

March 3, 2009

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The defendant's remaining contentions are without merit.

RIVERA, J.P., FISHER, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer  
Clerk of the Court