

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

D23311
C/prt

_____AD3d_____

Argued - April 16, 2009

REINALDO E. RIVERA, J.P.
MARK C. DILLON
ARIEL E. BELEN
L. PRISCILLA HALL, JJ.

2006-09512

DECISION & ORDER

The People, etc., respondent,
v Jeffrey Coles, appellant.

(Ind. No. 6577/05)

Lynn W. L. Fahey, New York, N.Y. (Kendra L. Hutchinson of counsel), for appellant.

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

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Starkey, J.), rendered September 25, 2006, convicting him of criminal possession of a weapon in the third degree, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing, of that branch of the defendant's omnibus motion which was to suppress physical evidence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the testimony of the arresting police officer was not incredible as a matter of law, as it was not "manifestly untrue, physically impossible, contrary to experience, or self-contradictory" (*People v Garafolo*, 44 AD2d 86, 88, quoting 22 NY Jur Evidence § 649). Accordingly, suppression of the physical evidence in question was properly denied.

Furthermore, the defendant's contention that the trial court committed reversible error when it instructed the jury on reasonable doubt is not preserved for appellate review, as the defendant did not object to the instructions at the time they were given (*see* CPL 470.05[2]; *People v*

McAloney, 2 AD3d 538, 539). In any event, the defendant's contention is without merit because the instructions, on the whole, conveyed the correct standard to be employed by the jury (see *People v Fields*, 87 NY2d 821, 823; *People v Love*, 37 AD3d 618, 619; *People v Sanchez*, 29 AD3d 608).

The defendant received meaningful representation (see *People v Benevento*, 91 NY2d 708).

RIVERA, J.P., DILLON, BELEN and HALL, 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