

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

D23880  
W/hu

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Submitted - June 9, 2009

A. GAIL PRUDENTI, P.J.  
HOWARD MILLER  
JOSEPH COVELLO  
LEONARD B. AUSTIN, JJ.

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2008-11674

DECISION & ORDER

The People, etc., respondent,  
v Steven Hardie, appellant.

(Ind. No. 08-00006)

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Paul Trachte, Newburgh, N.Y. (Kenyon C. Trachte of counsel), for appellant.

Francis D. Phillips II, District Attorney, Goshen, N.Y. (Lauren E. Dunnock and Andrew R. Kass of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Orange County (Berry, J.), rendered July 14, 2008, convicting him of criminal possession of a weapon in the second degree, upon his plea of guilty, 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.

To the extent that the defendant's hearing testimony regarding a butane lighter and the charring of a marijuana cigarette raised any inconsistencies with the testimony of the arresting officer, they merely presented questions of credibility for the hearing court to resolve. The credibility determinations of the hearing court are to be accorded great weight, given the court's unique perspective of having seen and heard the witnesses (*see People v Porchilo*, 41 NY2d 759, 761; *People v Wheeler*, 2 NY3d 370, 374; *People v Cruz*, 59 AD3d 457, *lv denied* 12 NY3d 852). The credibility determinations of the hearing court will not be disturbed where there is support in the record for such determinations and there is no showing that they were clearly erroneous (*see People v Bennett*, 57 AD3d 912; *People v Timmons*, 54 AD3d 883; *People v Britton*, 49 AD3d 893, 894; *People v Washington*, 182 AD2d 791). Here, there is clear support in the record for crediting the

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officer's testimony. Accordingly, that branch of the defendant's omnibus motion which was to suppress physical evidence was properly denied.

PRUDENTI, P.J., MILLER, COVELLO and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer  
Clerk of the Court