

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

D23969
T/kmg

_____AD3d_____

Argued - November 20, 2007

ROBERT A. SPOLZINO, J.P.
JOSEPH COVELLO
PLUMMER E. LOTT
LEONARD B. AUSTIN, JJ.

2004-01647

DECISION & ORDER

The People, etc., respondent,
v Sean Redding, appellant.

(Ind. No. 7892/02)

Lynn W. L. Fahey, New York, N.Y. (Denise A. Corsi of counsel), for appellant.

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

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Collini, J.), rendered January 14, 2004, convicting him of attempted assault in the first degree, criminal possession of a weapon in the second degree, and reckless endangerment in the first degree, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial (DiMango, J.), without a hearing, of that branch of the defendant's omnibus motion which was to suppress identification testimony. By decision and order dated January 29, 2008, this Court remitted the matter to the Supreme Court, Kings County, to hear and report on that branch of the defendant's omnibus motion which was to suppress identification testimony, and held the appeal in abeyance in the interim (*see People v Redding*, 47 AD3d 953). The Supreme Court, Kings County (DiMango, J.), has now filed its report. Justices Covello, Lott, and Austin have been substituted for former Associate Justice Ritter and Associate Justices Carni and McCarthy.

ORDERED that the judgment is reversed, on the law, that branch of the defendant's omnibus motion which was to suppress identification testimony is granted, and a new trial is ordered, to be preceded by a hearing to determine whether an independent source for the identification exists.

September 8, 2009

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That branch of the defendant's omnibus motion which was to suppress identification testimony should have been granted. The alleged photocopy of the photographic array admitted into evidence at the hearing and the testimony concerning the array failed to provide a sufficient basis to overcome any inference that the array was suggestive (*cf. People v Morciglio*, 29 AD3d 710, 711; *People v Coleman*, 2 AD3d 1045, 1046).

In light of our determination, we need not reach the defendant's remaining contentions.

SPOLZINO, J.P., COVELLO, LOTT and AUSTIN, 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