

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

D24561
Y/prt

_____AD3d_____

Argued - September 15, 2009

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
HOWARD MILLER
LEONARD B. AUSTIN, JJ.

2008-04925

DECISION & ORDER

The People, etc., respondent,
v Raphael Blankumsce, appellant.

(Ind. No. 10255/07)

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

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano and Merri Turk Lasky of counsel; Lorrie A. Zinno on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Buchter, J.), rendered May 6, 2008, convicting him of criminal possession of a controlled substance in the third degree, upon his plea of guilty, and imposing sentence. The appeal brings up for review the denial, after a hearing (Demakos, J.H.O.), of that branch of the defendant's omnibus motion which was to suppress physical evidence.

ORDERED that the judgment is affirmed.

The Supreme Court did not err in crediting the testimony of Detective Kuhno at the suppression hearing. The credibility determinations of the hearing court are to be accorded great weight on appeal, given that court's unique perspective of having seen and heard the witnesses (*see People v Prochilo*, 41 NY2d 759, 761), and upon our review of the record, we perceive no reason to disturb the hearing court's determination here. Moreover, contrary to the defendant's contention,

October 6, 2009

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Detective Kuhno's testimony was not "manifestly untrue, physically impossible, contrary to experience, or self-contradictory" (*People v Garofolo*, 44 AD2d 86, 88, quoting 22 NY Jur. Evidence § 649; cf. *People v Miret-Gonzalez*, 159 AD2d 647, 649). Accordingly, that branch of the defendant's omnibus motion which was to suppress physical evidence was properly denied.

RIVERA, J.P., FLORIO, MILLER and AUSTIN, 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