

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

D24621  
H/prt

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Submitted - September 17, 2009

STEVEN W. FISHER, J.P.  
JOSEPH COVELLO  
DANIEL D. ANGIOLILLO  
SHERI S. ROMAN, JJ.

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2008-01090

DECISION & ORDER

The People, etc., respondent,  
v Fredrick Jenkins, appellant.

(Ind. No. 403/07)

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Michael D. Elbert, Mineola, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Margaret E. Mainusch of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Nassau County (Donnino, J.), rendered December 13, 2007, convicting him of murder in the first degree, upon his plea of guilty, and imposing sentence. The appeal brings up for review the denial, after a hearing (Honorof, J.), pursuant to a stipulation in lieu of motions, of the suppression of physical evidence.

ORDERED that the judgment is affirmed.

The defendant did not establish standing to contest the police search of his cigarette butts which he discarded in the police precinct and from which his DNA was extracted (*see People v Ramirez-Portoreal*, 88 NY2d 99, 108). The defendant failed to demonstrate a legitimate expectation of privacy in the cigarette butts.

In any event, the People met their burden of demonstrating that the defendant abandoned the cigarette butts by voluntarily and intentionally discarding those items, an act

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constituting a waiver of any legitimate expectation of privacy (*id.* at 110).

FISHER, J.P., COVELLO, ANGIOLILLO and ROMAN, 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