

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

D25538
W/cb

_____AD3d_____

Submitted - December 2, 2009

PETER B. SKELOS, J.P.
ANITA R. FLORIO
RUTH C. BALKIN
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2008-08044

DECISION & ORDER

The People, etc., respondent,
v Carney Broadwater, appellant.

(Ind. No. 221/08)

Robert C. Mitchell, Riverhead, N.Y. (Alfred J. Cicale of counsel), for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Marcia R. Kucera of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (Gazzillo, J.), rendered July 24, 2008, convicting him of criminal possession of a controlled substance in the second degree, criminal possession of a weapon in the second degree, and criminal possession of a controlled substance in the third degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contentions regarding the factual sufficiency of his plea allocution with respect to the count of the indictment charging him with criminal possession of a weapon in the second degree are unreserved for appellate review, since he failed to move to withdraw his plea prior to sentencing on those grounds, and because his recitation of the facts during his allocution did not cast significant doubt on his guilt or otherwise call into question the voluntariness of the plea (*see* CPL 470.05[2]; *People v Lopez*, 71 NY2d 662, 665-666; *People v Russell*, 60 AD3d 706; *People v Sanabria*, 52 AD3d 743, 744; *People v Pratcher*, 50 AD3d 1063; *People v Elcine*, 43 AD3d 1176, 1177). In any event, the facts admitted in the allocution were sufficient to support the defendant's

plea of guilty to criminal possession of a weapon in the second degree (*see* Penal Law § 265.03; *People v Torres*, 68 NY2d 677, 678-679; *People v Nix*, 53 AD3d 557; *People v Cade*, 215 AD2d 772, 773).

SKELOS, J.P., FLORIO, BALKIN, BELEN 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