

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

D25624
C/kmg

_____AD3d_____

Argued - December 8, 2009

MARK C. DILLON, J.P.
ANITA R. FLORIO
L. PRISCILLA HALL
SANDRA L. SGROI, JJ.

2007-06180

DECISION & ORDER

The People, etc., respondent,
v Joseph Solimini, appellant.

(Ind. No. 2502/06)

Lynn W. L. Fahey, New York, N.Y. (Steven R. Bernhard of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Nicoletta J. Caferra, and Laura T. Ross of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Knopf, J.), rendered June 20, 2007, as amended June 21, 2007, convicting him of robbery in the first degree, robbery in the second degree, criminal possession of stolen property in the fourth degree, and criminal possession of a weapon in the fourth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment, as amended, is affirmed.

Contrary to the defendant's contention, there was a sufficient factual predicate in the record to support a jury instruction on consciousness of guilt (*see People v Robinson*, 10 AD3d 696; *People v Blasini*, 253 AD2d 886; *People v London*, 248 AD2d 554; *People v Shepherd*, 176 AD2d 369).

Further, the court, in giving its instruction, "conveyed the proper standard of law and did not confuse or mislead the jury" (*People v London*, 248 AD2d at 555). The court, inter alia, instructed the jury on the weight to be given to the evidence, properly left to the jury the question of whether the evidence indicated consciousness of guilt, and discussed the possibility of an "innocent explanation" for the conduct at issue (*see People v Shepherd*, 176 AD2d at 370). The court also

properly instructed the jury that consciousness of guilt evidence, on its own, may never be the basis for a finding of guilt (*see People v Robinson*, 10 AD3d 696).

DILLON, J.P., FLORIO, HALL and SGROI, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court