

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

D25794
C/kmg

_____AD3d_____

Submitted - December 21, 2009

PETER B. SKELOS, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2006-08302
2006-09499

DECISION & ORDER

The People, etc., respondent,
v Jamel Albritton, appellant.

(Ind. No. 820/04)

B. Alan Seidler, New York, N.Y., for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Sholom J. Twersky of counsel; Kai Fan on the brief), for respondent.

Appeals by the defendant from (1) a judgment of the Supreme Court, Kings County (Hall, J.), rendered August 16, 2006, convicting him of criminal possession of a weapon in the second degree and criminal possession of a forged instrument in the second degree (two counts), upon a jury verdict, and imposing sentence, and (2) a resentencing of the same court imposed September 22, 2006.

ORDERED that the judgment and the resentencing are affirmed.

The defendant's contention that the trial court erred in failing to instruct the jury on the defense of justification with respect to the count of the indictment charging him with criminal possession of a weapon in the second degree is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Smith*, 54 AD3d 421, 422; *People v Williams*, 38 AD3d 577, 578). In any event, the trial court properly refused to charge the defense of justification with respect to that count (*see People v Pons*, 68 NY2d 264, 265; *People v Smith*, 54 AD3d 421; *People v Johnson*, 30 AD3d 439).

Contrary to the defendant's contentions, the Supreme Court properly adjudicated him a persistent violent felony offender based on his 1992 and 1995 convictions (*see People v Rodriguez*,

49 AD3d 903, 904; *People v Adelman*, 36 AD3d 926, 928). The defendant is estopped from challenging his 1992 conviction because he did not challenge its constitutionality in 1995, when it served as the predicate for his sentencing as a second violent felony offender (*see People v Rodriguez*, 49 AD3d at 904; *People v Adelman*, 36 AD3d at 928).

SKELOS, J.P., BALKIN, LEVENTHAL and LOTT, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court