

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

D25893
O/kmg

_____AD3d_____

Argued - December 18, 2009

REINALDO E. RIVERA, J.P.
MARK C. DILLON
ARIEL E. BELEN
SHERI S. ROMAN, JJ.

2007-11773

DECISION & ORDER

The People, etc., respondent,
v Thomas Caicedo, appellant.

(Ind. No. 747/07)

SeiffKretz & Abercrombie, New York, N.Y. (Eric A. Seiff of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Jeanette Lifschitz, and Howard McCallum of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Knopf, J.), rendered December 6, 2007, convicting him of criminal possession of a weapon in the second degree and criminal possession of a weapon in the third degree (two counts), upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing (O'Dwyer, J.H.O.), of that branch of the defendant's omnibus motion which was to suppress physical evidence.

ORDERED that the judgment is affirmed.

In order to justify a frisk or "pat-down" of a suspect's outer clothing, a police officer must have "knowledge of some fact or circumstance that supports a reasonable suspicion that the suspect is armed or poses a threat to safety" (*People v Batista*, 88 NY2d 650, 654; *see People De Bour*, 40 NY2d 210, 223; CPL 140.50[1], [3]). Contrary to the defendant's contention, the police officer who attempted to pat down his right jacket pocket had reason to suspect that he was armed (*see People v Mims*, 32 AD3d 800, 800; *People v Robinson*, 278 AD2d 808, 809; *People v Pettis*, 195 AD2d 421, 422). Accordingly, the judicial hearing officer properly denied that branch of the defendant's motion which was to suppress the gun, the magazine, and the bullet cartridges which he

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discarded after fleeing from the officer.

We decline the defendant's request to reduce the sentence imposed on the criminal possession of a weapon in the second degree count in the exercise of our interest of justice jurisdiction (*see* CPL 470.15[3][c]; *People v Martinez*, 58 AD3d 754, 756).

RIVERA, J.P., DILLON, BELEN 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