

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

D26348
W/prt

_____AD3d_____

Argued - January 29, 2010

WILLIAM F. MASTRO, J.P.
DANIEL D. ANGIOLILLO
RUTH C. BALKIN
SANDRA L. SGROI, JJ.

2009-03277

DECISION & ORDER

The People, etc., appellant,
v Arden Cadle, respondent.

(Ind. No. 10100/07)

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Terry-Ann Llewellyn of counsel), for appellant.

The Law Office of Audrey A. Thomas, P.C., Rosedale, N.Y., for respondent.

Appeal by the People from an order of the Supreme Court, Kings County (J. Goldberg, J.), dated March 30, 2009, which, after a hearing, granted that branch of the defendant's omnibus motion which was to suppress physical evidence.

ORDERED that the order is affirmed.

The defendant was observed by a police officer while walking down a street at night and holding his waistband, in what the police described as a high-crime area. According to that police officer, the defendant appeared to be "overly alerted" to his surroundings or "afraid of something." The officer and two other officers, all in plainclothes, were driving in an unmarked car. The officer testified that the defendant saw the car and then ran away from it. The officers pursued him, and he discarded a gun during the pursuit.

Under the circumstances of this case, the officers' pursuit of the defendant was unlawful, and the defendant's discarding of the weapon during the pursuit was precipitated by the

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illegality and was not attenuated from it (*see People v Lopez*, 67 AD3d 708; *cf. People v Boodle*, 47 NY2d 398, *cert denied* 444 US 969). Accordingly, the Supreme Court properly granted that branch of the defendant's omnibus motion which was to suppress the weapon.

MASTRO, J.P., ANGIOLILLO, BALKIN and SGROI, 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