

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

D27840
O/prt

_____AD3d_____

Submitted - May 24, 2010

WILLIAM F. MASTRO, J.P.
JOSEPH COVELLO
ARIEL E. BELEN
L. PRISCILLA HALL, JJ.

2009-00283

DECISION & ORDER

The People, etc., respondent,
v Tyrone Hill, appellant.

(Ind. No. 08-00440)

Richard N. Lentino, Middletown, N.Y., for appellant.

Francis D. Phillips II, District Attorney, Goshen, N.Y. (Elizabeth L. Guinup, Robert Middlemiss, and Andrew R. Kass of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Orange County (DeRosa, J.), rendered December 18, 2008, convicting him of criminal possession of a weapon in the second degree and reckless endangerment in the second degree, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing, of that branch of the defendant's omnibus motion which was to suppress identification testimony.

ORDERED that the judgment is affirmed.

The record supports the hearing court's determination that the pretrial identification procedure was not unduly suggestive. Accordingly, the hearing court properly denied suppression of the identification testimony of the witness who identified the defendant during that procedure (*see People v Chipp*, 75 NY2d 327, 335-336, *cert denied*, 498 US 833).

Viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620, 621), we find that it was legally sufficient to establish the defendant's guilt beyond a reasonable doubt. Moreover, in fulfilling our responsibility to conduct an independent review of the weight of the evidence (*see People v Danielson*, 9 NY3d 342; CPL 470.15 [5]), we

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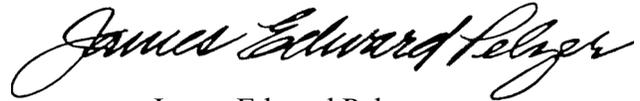
nevertheless accord great deference to the fact-finder's opportunity to view the witnesses, hear the testimony, and observe demeanor (*see People v Mateo*, 2 NY3d 383, 410, *cert denied* 542 US 946; *People v Bleakley*, 69 NY2d 490, 495). Upon reviewing the record here, we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

The defendant's remaining contentions are without merit.

MASTRO, J.P., COVELLO, BELEN and HALL, 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