

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

D28109
H/kmg

_____AD3d_____

Submitted - June 21, 2010

PETER B. SKELOS, J.P.
L. PRISCILLA HALL
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2010-03535

DECISION, JUDGMENT & ORDER

In the Matter of Keith King, petitioner, v
Gary Weber, respondent.

Robert C. Mitchell, Riverhead, N.Y. (Holly C. Meyer of counsel), for petitioner.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Charles F. Sanders of
counsel), for respondent.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Michael J. Miller of counsel),
for nonparty Suffolk County District Attorney.

Proceeding pursuant to CPLR article 78 in the nature of prohibition to prohibit enforcement of an order of the County Court, Suffolk County (Weber, J.), dated March 15, 2010, which granted the motion of the nonparty Suffolk County District Attorney to direct the petitioner to appear for a corporeal lineup identification proceeding in connection with the investigation of the robbery of a named individual who identified the petitioner in a photographic array.

ADJUDGED that the petition is denied, and the proceeding is dismissed, without costs or disbursements; and it is further,

ORDERED that the temporary restraining order contained in the order to show cause dated April 16, 2010, is vacated.

A suspect may be ordered to appear in a lineup, or provide other nontestimonial evidence, when the People establish (1) probable cause to believe the suspect has committed the

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crime, (2) a clear indication that relevant material will be found, and (3) that the method used is safe and reliable (see *Matter of Abe A.*, 56 NY2d 288; *Matter of Marino v Kahn*, 49 AD3d 741; *People v Shields*, 155 AD2d 978). The People satisfactorily established each of these elements.

Accordingly, the petitioner failed to demonstrate “a clear legal right to the extraordinary remedy of prohibition” (*Matter of DeFilippo v Rooney*, 46 AD3d 681, *affd* 11 NY3d 775).

SKELOS, J.P., HALL, ROMAN and SGROI, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court