

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

D30422  
O/kmb

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - February 22, 2011

DANIEL D. ANGIOLILLO, J.P.  
ANITA R. FLORIO  
JOHN M. LEVENTHAL  
ROBERT J. MILLER, JJ.

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2009-03243

DECISION & ORDER

The People, etc., respondent,  
v Malik Barley, appellant.

(Ind. No. 857/08)

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Michael A. Young, New York, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Tammy J. Smiley, Andre K. Cizmarik, Anthony J. Viola, and Nancy H. Van Der Veer of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Nassau County (Ayres, J.), rendered March 20, 2009, convicting him of criminal possession of a weapon 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 a statement he made to law enforcement officials.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the Supreme Court properly denied that branch of his omnibus motion which was to suppress a statement he made to law enforcement officials. The defendant's statement, although made before being informed of his *Miranda* rights (*see Miranda v Arizona*, 384 US 436), was spontaneous and "was not triggered by any police questioning or other conduct which reasonably could have been expected to elicit a declaration from him" (*People v Castro*, 73 AD3d 800, 801; *see People v Henderson*, 57 AD3d 562).

Moreover, the credibility determinations of a hearing court are accorded deference on appeal, and will not be disturbed unless clearly unsupported by the record (*see People v Prochilo*, 41

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NY2d 759; *People v George*, 78 AD3d 728; *People v Pearson*, 20 AD3d 575, 576; *People v Rivera*, 186 AD2d 692). Here, the hearing testimony of a police officer, who stated that he observed the defendant in possession of a gun in plain view inside the defendant's vehicle after stopping the vehicle for a traffic violation, was not incredible and did not appear to have been patently tailored to nullify constitutional objections (see *People v James*, 19 AD3d 617; *People v Foster*, 173 AD2d 841).

The defendant's remaining contention is unpreserved for appellate review and, in any event, without merit.

ANGIOLILLO, J.P., FLORIO, LEVENTHAL and MILLER, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court