

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

D36176  
W/hu

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

Argued - May 4, 2012

PETER B. SKELOS, J.P.  
JOHN M. LEVENTHAL  
ARIEL E. BELEN  
SHERI S. ROMAN, JJ.

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2010-11029

DECISION & ORDER

The People, etc., respondent,  
v John A. DiSalvo, appellant.

(Ind. No. 2078/07)

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Bartels & Feureisen, LLP, White Plains, N.Y. (Michael Fahey of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (Gary Fidel and Donna Aldea of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Holder, J.), rendered November 12, 2010, convicting him of criminal possession of a weapon in the second degree (four counts), criminal possession of a weapon in the third degree (three counts), and unlawful possession of pistol ammunition, upon his plea of guilty, and imposing sentence. The appeal brings up for review an order of the same court dated June 18, 2010, which, upon reargument, vacated the determination in an order dated February 22, 2010, after a hearing, granting that branch of the defendant's omnibus motion which was to suppress physical evidence, and thereupon denied that branch of the defendant's motion.

ORDERED that the judgment is affirmed, and the matter is remitted to the Supreme Court, Queens County, for further proceedings pursuant to CPL 460.50(5).

Contrary to the defendant's contention, the record supports the hearing court's determination that the stop of the vehicle in which he was a passenger was based on reasonable suspicion. Accordingly, the Supreme Court, upon reargument, properly vacated its prior determination granting that branch of the defendant's motion which was to suppress the physical evidence recovered, and thereupon denied that branch of the defendant's motion (*see People v*

October 10, 2012

Page 1.

PEOPLE v DiSALVO, JOHN A.

*Argyris*, \_\_\_\_\_ AD3d \_\_\_\_\_ [decided herewith]).

SKELOS, J.P., LEVENTHAL, BELEN and ROMAN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court