

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

D20494
C/hu

_____AD3d_____

Submitted - September 8, 2008

REINALDO E. RIVERA, J.P.
HOWARD MILLER
DANIEL D. ANGIOLILLO
CHERYL E. CHAMBERS, JJ.

2007-02957

DECISION & ORDER

The People, etc., respondent,
v Dennis Trotter, appellant.

(Ind. No. 1382/05)

Lynn W. L. Fahey, New York, N.Y. (Barry Stendig of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,
Jeanette Lifschitz, and Muhammad Ikhlas of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Kohm, J.), rendered February 27, 2007, convicting him of criminal possession of a weapon in the third degree (two counts), upon his plea of guilty, and imposing sentence. The appeal brings up for review an order of the same court (Aloise, J.) dated December 5, 2006, denying, without a hearing, the defendant's renewed branch of his omnibus motion which was to suppress physical evidence.

ORDERED that the order dated December 5, 2006, is vacated, and the matter is remitted to the Supreme Court, Queens County, to hear and report on the defendant's renewed branch of his omnibus motion which was to suppress physical evidence, and the appeal is held in abeyance in the interim. The Supreme Court, Queens County, is to file its report with all convenient speed.

Under the circumstances presented, the Supreme Court improvidently exercised its

September 30, 2008

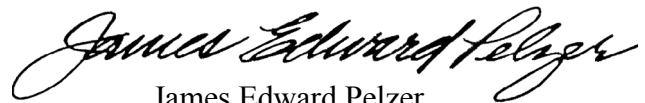
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discretion in summarily denying the defendant's renewed branch of his prior omnibus motion which was to suppress physical evidence (*see* CPL 710.40[4]; *People v Velez*, 39 AD3d 38; *People v Kuberka*, 215 AD2d 592). Accordingly, we remit the matter to the Supreme Court, Queens County, for a hearing on the renewed motion, and the appeal is held in abeyance in the interim.

RIVERA, J.P., MILLER, ANGIOLILLO and CHAMBERS, 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