

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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KA 07-01125

PRESENT: CENTRA, J.P., FAHEY, CARNI, GREEN, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JOSEPH CALLOWAY, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (TIMOTHY S. DAVIS OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (NICOLE M. FANTIGROSSI OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Frank P. Geraci, Jr., J.), rendered December 13, 2006. The judgment convicted defendant, upon a nonjury verdict, of criminal possession of a weapon in the third degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him, following a nonjury trial, of criminal possession of a weapon in the third degree (Penal Law § 265.02 [former (4)]). We reject the contention of defendant that County Court erred in refusing to suppress evidence obtained by the police during the search of the vehicle that he was driving. Contrary to defendant's contention, the People established at the suppression hearing that the owner's consent " 'was in fact voluntarily given, and not the result of duress or coercion, express or implied' by the actions of the law enforcement authorities" (*People v Quagliata*, 53 AD3d 670, 671, lv denied 11 NY3d 834, quoting *Schneckloth v Bustamonte*, 412 US 218, 248).

Entered: March 19, 2010

Patricia L. Morgan
Clerk of the Court