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HPeople v. Knapper
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The People of the State of New York, Respondent,
v.
Harold Knapper, Appellant.
Supreme Court, Appellate Division, First Department, New York

(December 6, 1990)

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Judgment, Supreme Court, Bronx County (Vincent Vitale, J., at hearing, trial and sentence), rendered October 6, 1988, convicting defendant, after a jury trial, of robbery in the first and third degrees and sentencing him, as a predicate felony offender to concurrent terms of 8 to 16 years' and 3 1/2 to 7 years' imprisonment, unanimously affirmed.

The complainants, who had been robbed by defendant, separately viewed books of photographs when one complainant yelled out, "That's him", causing the other complainant to enter the room and confirm the identification. Situations that are not the result of improper conduct by law enforcement officials do not warrant suppression or violate due process. (*People v Shepard*, 162 AD2d 226.) Furthermore, the court found that there was an independent source for such identification, with which we are in agreement.

The introduction into evidence of a pen that was similar to the one used in the crime was not an abuse of the trial court's discretion. A facsimile or model is admissible in evidence to assist the jury where it is relevant to a matter at issue and "fairly represents" the items it seeks to symbolize. (*People v Del Vermo*, 192 NY 470, 483.)

Concur--Murphy, P. J., Ross, Ellerin and Smith, JJ.

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N.Y.A.D.,1990.