

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

D12297  
O/hu

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

Submitted - September 11, 2006

HOWARD MILLER, J.P.  
GLORIA GOLDSTEIN  
WILLIAM F. MASTRO  
MARK C. DILLON, JJ.

---

2003-11248

DECISION & ORDER

The People, etc., respondent,  
v Kevin Thompson, appellant.

(Ind. No. 946/01)

---

Lynn W. L. Fahey, New York, N.Y. (Barbara Lerner of counsel), for appellant, and appellant pro se.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Johnnette Trill, and Joyce Smith of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (McDonald, J.), rendered December 10, 2003, convicting him of attempted burglary in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620), we find that it was legally sufficient to establish the defendant's guilt beyond a reasonable doubt (*see Penal Law §§ 110; 140.25[2]*; *People v Castillo*, 47 NY2d 270, 274-277; *People v Mitteager*, 44 NY2d 927, 928).

The defendant's contention that his adjudication as a persistent violent felony offender violated his right to a jury trial is unpreserved for appellate review, and in any event, is without merit (*see People v Rosen*, 96 NY2d 329, *cert denied* 534 US 899; *see also People v Rivera*, 5 NY3d 61, 67).

October 17, 2006

PEOPLE v THOMPSON, KEVIN

Page 1.

The defendant's contentions raised in his supplemental pro se brief are without merit.

MILLER, J.P., GOLDSTEIN, MASTRO and DILLON, 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