

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

D14261
Y/mv

_____AD3d_____

Submitted - February 15, 2007

WILLIAM F. MASTRO, J.P.
GABRIEL M. KRAUSMAN
ANITA R. FLORIO
RUTH C. BALKIN, JJ.

2004-07121

DECISION & ORDER

The People, etc., respondent,
v Ernest Crawford, appellant.

(Ind. No. 7827/03)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Jodi L. Mandel, and Anita T. Channapati of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (McKay, J.), rendered July 21, 2004, convicting him of criminal possession of a weapon in the third degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that the evidence was legally insufficient to establish guilt beyond a reasonable doubt and that the verdict was against the weight of the evidence. As an initial matter, the defendant's argument that the testimony of the People's witnesses was incredible as a matter of law, and therefore that the evidence was legally insufficient, is unpreserved for appellate review, as the defendant's motion to dismiss was based on a different argument (*see* CPL 470.05[2]; *People v Dien*, 77 NY2d 885, 886; *People v Udzenski*, 146 AD2d 245, 247). In any event, this was not a case where "all of the evidence of guilt comes from a single prosecution witness who gives irreconcilable testimony pointing both to guilt and innocence . . . [w]here the jury is left without basis, other than impermissible speculation, for its determination of either" (*People v Calabria*, 3 NY3d 80, 82 [internal quotation marks and citation omitted]). Rather, viewing the evidence in the light most

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favorable to the prosecution (*see People v Contes*, 60 NY2d 620), there existed a “valid line of reasoning and permissible inferences which could lead a rational person to the conclusion reached by the jury on the basis of the evidence at trial” (*People v Cahill*, 2 NY3d 14, 57, quoting *People v Bleakley*, 69 NY2d 490, 495).

Moreover, resolution of issues of credibility is primarily a matter to be determined by the jury, which saw and heard the witnesses, and its determination should be accorded great deference on appeal (*see People v Romero*, 7 NY3d 633, 644-645; *People v Mateo*, 2 NY3d 383, 410, *cert denied* 542 US 946). Upon the exercise of our factual review power (*see* CPL 470.15[5]), we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero*, *supra*).

MASTRO, J.P., KRAUSMAN, FLORIO and BALKIN, 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