

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

D15359

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_____AD3d_____

Argued - April 19, 2007

A. GAIL PRUDENTI, P.J.
STEVEN W. FISHER
MARK C. DILLON
THOMAS A. DICKERSON, JJ.

2005-02787

DECISION & ORDER

The People, etc., respondent,
v Tracy Cummings, appellant.

(Ind. No. 1827/04)

Steven Banks, New York, N.Y. (Amy Donner of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Ellen C. Abbot, and Zachary R. Hafer of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Latella, J.), rendered March 10, 2005, convicting him of attempted grand larceny in the third degree, attempted grand larceny in the fourth degree, possession of burglar's tools, and criminal mischief in the fourth 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 of attempted grand larceny in the third degree and attempted grand larceny in the fourth degree beyond a reasonable doubt. Moreover, resolution of issues of credibility is primarily a matter to be determined by the jury, and its determination should be accorded great deference on appeal (*see People v Romero*, 7 NY3d 633; *People v Mateo*, 2 NY3d 383, *cert denied* 542 US 946). Upon the

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exercise of our factual review power (*see* CPL 470.15), we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero, supra*).

PRUDENTI, P.J., FISHER, DILLON and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large initial "J".

James Edward Pelzer
Clerk of the Court