

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

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_____AD3d_____

Submitted - September 24, 2007

ROBERT W. SCHMIDT, J.P.
DAVID S. RITTER
GLORIA GOLDSTEIN
STEVEN W. FISHER, JJ.

2004-06473

DECISION & ORDER

The People, etc., respondent,
v Ronald Eliano, appellant.

(Ind. No. 2623/03)

Lynn W. L. Fahey, New York, N.Y. (Katherine R. Schaefer of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Thomas M. Ross, and Robert M. Scannell of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Mangano, J.), rendered June 22, 2004, convicting him of robbery in the second degree, assault in the second degree, and grand larceny in the fourth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that the prosecution failed to establish his guilt of robbery in the second degree and assault in the second degree beyond a reasonable doubt because the complainant did not sustain a “physical injury” within the meaning of Penal Law § 10.00(9). However, 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 support the jury’s finding of physical injury (*see People v Tejada*, 78 NY2d 936, *cert denied* 513 US 887; *People v Williams*, 23 AD3d 589, 590;

October 9, 2007

Page 1.

PEOPLE v ELIANO, RONALD

People v Santos, 286 AD2d 449; *People v Cartagena*, 276 AD2d 636, 637; *People v Rivera*, 183 AD2d 792, 793). Moreover, upon the exercise of our factual review power, we are satisfied that the verdict of guilt was not against the weight of the evidence (*see* CPL 470.15[5]; *People v Romero*, 7 NY3d 633, 644-645).

SCHMIDT, J.P., RITTER, GOLDSTEIN and FISHER, 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