

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

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_____AD3d_____

Argued - September 21, 2007

REINALDO E. RIVERA, J.P.
JOSEPH COVELLO
RUTH C. BALKIN
WILLIAM E. McCARTHY, JJ.

2004-08035

DECISION & ORDER

The People, etc., respondent,
v Dwayne Townsend, appellant.

(Ind. No. 2893/03)

Lynn W. L. Fahey, New York, N.Y. (De Nice Powell of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Shulamit Rosenblum, and Terry-Ann Llewellyn of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Chambers, J.), rendered August 12, 2004, convicting him of robbery in the first degree and attempted robbery in the first degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The trial court providently exercised its discretion in precluding defense counsel from eliciting testimony from a defense witness regarding a collateral issue (*see People v Petty*, 7 NY3d 277, 286; *People v Aska*, 91 NY2d 979, 981; *People v LaPetina*, 34 AD3d 836, 841-842, *affd* 9 NY3d 854; *People v Mason*, 256 AD2d 595).

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. 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

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satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

The defendant's remaining contentions are unpreserved for appellate review.

RIVERA, J.P., COVELLO, BALKIN and McCARTHY, 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