

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

D17677
X/kmg

_____AD3d_____

Argued - November 30, 2007

WILLIAM F. MASTRO, J.P.
JOSEPH COVELLO
DANIEL D. ANGIOLILLO
EDWARD D. CARNI, JJ.

2005-04516

DECISION & ORDER

The People, etc., respondent,
v Jamell Pitts, appellant.

(Ind. No. 3058/04)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Diane R. Eisner of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Collini, J.), rendered May 3, 2005, convicting him of robbery in the first degree and assault in the first degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the trial court's supplemental instruction and *Allen* charge (*see Allen v United States*, 164 US 492), read as a whole, struck a fair balance between encouraging jurors to attempt to reach a unanimous verdict and not to abandon their conscientiously-held beliefs (*see People v Boykin*, 14 AD3d 576; *People v Jolly*, 282 AD2d 474, 475).

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. Contrary to the defendant's contention, the victim's criminal record, history of drug use, and explanations of his prior arrests, which were fully explored before the jury, did not render his testimony incredible as a matter of law, but merely raised an issue of credibility for the jury

January 22, 2008

Page 1.

PEOPLE v PITTS, JAMELL

to consider (*see People v Smith*, 302 AD2d 615, 616; *People v Pagan*, 291 AD2d 509, 510; *People v Toro*, 272 AD2d 351). Moreover, 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*, 7 NY3d 633).

MASTRO, J.P., COVELLO, ANGIOLILLO and CARNI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court