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

D17686
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_____AD3d_____ Submitted - December 7, 2007

ROBERT A. LIFSON, J.P.
FRED T. SANTUCCI
JOSEPH COVELLO
DANIEL D. ANGIOLILLO, JJ.

2005-06687 DECISION & ORDER

The People, etc., respondent,
v Robert Rodriguez, appellant.

(Ind. No. 2405/03)

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

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

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Eng, J.), rendered May 9, 2005, convicting him of robbery in the first degree, robbery in the second degree, and criminal possession of a weapon in the fourth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contentions regarding legal sufficiency are unpreserved for appellate review (*see* CPL 470.05[2]; *People v Gray,* 86 NY2d 10, 19). In any event, 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. 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]). Contrary to the defendant's contention, the inconsistencies in the testimony of the prosecution's witnesses do not warrant reversal. "When two eyewitnesses to a crime give conflicting testimony, it is the jury that must weigh the evidence and determine who to believe" (*People v Schulz,* 4 NY3d 521, 530).

The sentence imposed was not excessive (*see People v Suitte,* 90 AD2d 80).

LIFSON, J.P., SANTUCCI, COVELLO and ANGIOLILLO, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court