

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

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_____AD3d_____

Argued - January 22, 2008

A. GAIL PRUDENTI, P.J.
ROBERT A. LIFSON
JOSEPH COVELLO
RUTH C. BALKIN, JJ.

2007-01015

DECISION & ORDER

The People, etc., respondent,
v Anthony Bode, appellant.

(Ind. No. 436/06)

Mitchell Dranow, Mineola, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Tammy J. Smiley and Barbara Kornblau of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Nassau County (LaPera, J.), rendered January 26, 2007, convicting him of assault in the second degree, engaging in a speed contest, reckless driving, and speeding, after a nonjury trial, and imposing sentence.

ORDERED that the judgment is affirmed, and the matter is remitted to the County Court, Nassau County, for further proceedings pursuant to CPL 460.50(5).

The defendant's contention that the evidence was legally insufficient to support his conviction of assault in the second degree is 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, 621), we find that it was legally sufficient to establish the defendant's guilt beyond a reasonable doubt. Moreover, upon the exercise of our factual

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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).

PRUDENTI, P.J., LIFSON, COVELLO and BALKIN, 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