

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

D18415
G/kmg

_____AD3d_____

Argued - February 19, 2008

PETER B. SKELOS, J.P.
ROBERT A. LIFSON
FRED T. SANTUCCI
RUTH C. BALKIN, JJ.

2004-09231

DECISION & ORDER

The People, etc., respondent,
v Stanley Sadler, appellant.

(Ind. No. 904-03)

Robert C. Mitchell, Riverhead, N.Y. (Kirk R. Brandt of counsel), for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Grazia DiVincenzo of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (Hinrichs, J.), rendered October 12, 2004, convicting him of sodomy in the first degree, sodomy in the third degree (three counts), sexual abuse in the third degree, and endangering the welfare of a child, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the evidence was legally insufficient to establish his guilt beyond a reasonable doubt is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Gray*, 86 NY2d 10, 19). Although the defendant did raise a similar argument in his motion pursuant to CPL 330 to set aside the verdict, raising such an argument for the first time in such a motion is not sufficient to preserve a claim for appellate review (*see People v Padro*, 75 NY2d 820, 821; *People v Donnigan*, 31 AD3d 576; *People v LaGuerre*, 29 AD3d 820, 821). In any event, viewing the evidence in the light most favorable to the prosecution and affording it the benefit of every favorable inference to be drawn therefrom (*see Jackson v Virginia*, 443 US 307, 319; *People v Contes*, 60 NY2d 620, 621), it was legally sufficient to establish the defendant's guilt beyond a reasonable doubt (*see People v Plaisted*, 2 AD3d 906, 907; *People v Stephens*, 2 AD3d 888, 889; *People v Smith*, 302

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AD2d 677, 679; *People v Williams*, 259 AD2d 509). 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).

The defendant failed to preserve for appellate review his contention that the sentence imposed by the County Court improperly penalized him for exercising his right to a jury trial, as he did not raise this issue on the record at the time of sentencing (*see People v Robinson*, 287 AD2d 582). In any event, the defendant's contention is without merit (*see People v Martinez*, 289 AD2d 259, 259-260; *People v Robinson*, 287 AD2d at 582-583). Further, the sentence imposed was not excessive (*see People v Suite*, 90 AD2d 80).

SKELOS, J.P., LIFSON, SANTUCCI and BALKIN, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court