

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

D18579
O/hu

_____AD3d_____

Argued - February 29, 2008

WILLIAM F. MASTRO, J.P.
JOSEPH COVELLO
THOMAS A. DICKERSON
RANDALL T. ENG, JJ.

2005-08848

DECISION & ORDER

The People, etc., respondent,
v Brentnol A. Britton, appellant.

(Ind. No. 2825/03)

Randall D. Unger, Bayside, N.Y., for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,
Sharon Y. Brodt, and Ushir Pandit of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Erlbaum, J.), rendered October 5, 2004, convicting him of attempted assault in the first degree, assault in the second degree, and assault in the third degree, after a nonjury trial, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the evidence convicting him of attempted assault in the first degree and assault in the second degree was not legally insufficient due to a lack of proof of intent. In this case, the element of intent may be inferred from the commission of the act itself, as well as from the defendant's conduct and the surrounding circumstances (*see People v Bracey*, 41 NY2d 296, 301; *People v Bryant*, 39 AD3d 768; *People v Persaud*, 25 AD3d 626). 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 that the defendant acted with the requisite intent in committing the offenses of which he was convicted. 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).

March 25, 2008

Page 1.

PEOPLE v BRITTON, BRENTNOL A.

The defendant's remaining contentions are unpreserved for appellate review (*see* CPL 470.05[2]) and, in any event, are without merit.

MASTRO, J.P., COVELLO, DICKERSON and ENG, 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