

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

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Submitted - March 3, 2008

PETER B. SKELOS, J.P.
DANIEL D. ANGIOLILLO
JOHN M. LEVENTHAL
ARIEL E. BELEN, JJ.

2006-08907

DECISION & ORDER

The People, etc., respondent,
v Jesse Williams, appellant.

(Ind. No. 3762/05)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Rhea A. Grob, and James W. Halter of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Reichbach, J.), rendered September 13, 2006, convicting him of robbery in the first degree (two counts) and assault in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the complainant did not sustain a "physical injury" within the meaning of Penal Law § 10.00(9) was not raised at trial and, accordingly, is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Gray*, 86 NY2d 10; *People v Garcia*, 9 AD3d 470, 471). 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, beyond a reasonable doubt, that the complainant sustained a "physical injury" within the meaning of Penal Law § 10.00(9) (*see People v Chiddick*, 8 NY3d 445; *People v Harvey*, 309 AD2d 713; *cf. Matter of Philip A.*, 49 NY2d 198, 200; *Matter of Ashley M.*, 35 AD3d 612, 613).

Moreover, the defendant's contention that certain comments made by the prosecutor during summation were improper is unpreserved for appellate review, since the defendant failed to

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object or raised only a general objection to the remarks (*see* CPL 470.05[2]; *People v Tonge*, 93 NY2d 838, 839-840; *People v Almonte*, 23 AD3d 392, 394; *People v Martinez*, 17 AD3d 484, 485). In any event, the challenged remarks were a permissible response to the defense counsel's summation (*see* *People v Carter*, 36 AD3d 624; *People v Martinez*, 17 AD3d 484; *People v Duplessis*, 16 AD3d 846; *People v Keller*, 238 AD2d 758; *People v Colonna*, 135 AD2d 724).

The defendant's remaining contention is without merit.

SKELOS, J.P., ANGIOLILLO, LEVENTHAL and BELEN, 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