

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

D19066
C/prt

_____AD3d_____

Argued - April 3, 2008

HOWARD MILLER, J.P.
MARK C. DILLON
WILLIAM E. McCARTHY
CHERYL E. CHAMBERS, JJ.

2005-11946

DECISION & ORDER

The People, etc., respondent,
v Henry Valencia, appellant.

(Ind. No. 908/05)

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

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Ellen C. Abbot, and Aisha Greene of counsel; Michelle Kaszuba on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Latella, J.), rendered December 13, 2005, convicting him of robbery in the second degree and assault in the second degree, after a nonjury trial, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant was convicted of robbery in the second degree and assault in the second degree. He claims that his conviction was not based on legally sufficient evidence that the victim suffered “physical injury,” as defined by the Penal Law. We disagree. 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 support the finding that the complainant sustained a physical injury as defined by the Penal Law (*see* Penal Law §§ 10.00[9], 160.10[2], 120.05[6]). The victim testified that the defendant forcibly entered her car and repeatedly banged her head on the car door. The victim sustained a black eye and bruising on her face, neck, and shoulders, and experienced pain for approximately one week. The evidence of the circumstances of the attack and the victim’s injuries was sufficient to establish that she suffered “physical injury” because she suffered substantial pain (*see* Penal Law § 10.00[9]; *People v Chiddick*, 8 NY3d 445, 447-448; *People v Henderson*, 92 NY2d

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677, 680; *People v Guidice*, 83 NY2d 630, 636; *People v Branch*, 306 AD2d 537).

Further, upon the exercise of our factual review power (*see* CPL 470.15[5]), we are satisfied that the verdict was not against the weight of the evidence (*see People v Romero*, 7 NY3d 733).

MILLER, J.P., DILLON, McCARTHY and CHAMBERS, 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