

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

D19688
W/hu

_____AD3d_____

Argued - January 24, 2008

PETER B. SKELOS, J.P.
STEVEN W. FISHER
MARK C. DILLON
WILLIAM E. McCARTHY, JJ.

2006-00482

DECISION & ORDER

The People, etc., respondent,
v Johnathan Boston, appellant.

(Ind. No. 2608/04)

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

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,
Johnnette Traill, and Ayelet Sela of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Eng, J.), rendered December 14, 2005, convicting him of attempted robbery in the first degree (two counts), attempted robbery in the second degree, criminal possession of a weapon in the third degree (two counts), and reckless endangerment in the first degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the Supreme Court did not improperly grant the People's reverse-Batson application (*see Batson v Kentucky*, 476 US 79; *People v Kern*, 75 NY2d 638). The court concluded that the facially race-neutral reasons proffered by the defendant's counsel to explain the two peremptory challenges in question were pretextual. The court's determination, based upon its credibility assessment, is entitled to great deference on appeal and will not be disturbed where, as here, it is supported by the record (*see Hernandez v New York*, 500 US 352, 364-365; *Batson v Kentucky*, 476 US at 98 n 21; *People v Quito*, 43 AD3d 411, 412-413; *People v Williams*, 5 AD3d 705, 706).

June 17, 2008

PEOPLE v BOSTON, JOHNATHAN

Page 1.

The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

The defendant's remaining contentions are without merit.

SKELOS, J.P., FISHER, DILLON and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, looping initial "J".

James Edward Pelzer
Clerk of the Court