

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

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Submitted - May 29, 2008

REINALDO E. RIVERA, J.P.
STEVEN W. FISHER
ROBERT A. LIFSON
MARK C. DILLON, JJ.

2007-05791

DECISION & ORDER

The People, etc., respondent,
v Benjamin Lopez, appellant.

(Ind. No. 06-00468)

Stephen J. Pittari, White Plains, N.Y. (Jacqueline F. Oliva of counsel), for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (Lois Cullen Valerio, Richard Longworth Hecht, and Anthony J. Servino of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Westchester County (Loehr, J.), rendered June 11, 2007, convicting him of criminal possession of a weapon in the third degree, menacing in the second degree, and attempted assault in the first degree, after a nonjury trial, and imposing sentence.

ORDERED that the judgment is affirmed.

Resolution of issues of credibility is primarily a matter to be determined by the fact finder, which saw and heard the witnesses, and its determination should be accorded great deference on appeal (*see People v Romero*, 7 NY3d 633, 644-645; *People v Mateo*, 2 NY3d 383, 410, *cert denied* 542 US 946). Upon the exercise of our factual review power (*see* CPL 470.15[5]), we are satisfied that the verdict of guilt of attempted assault in the first degree was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

July 8, 2008

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Contrary to the defendant's contention, the sentence imposed on the conviction of attempted assault in the first degree was not excessive (*see People v Suitte*, 90 AD2d 80, 85-86).

RIVERA, J.P., FISHER, LIFSON and DILLON, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court