

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

D19976
C/prt

_____AD3d_____

Argued - June 17, 2008

A. GAIL PRUDENTI, P.J.
DAVID S. RITTER
ANITA R. FLORIO
WILLIAM E. McCARTHY, JJ.

2006-10570

DECISION & ORDER

The People, etc., respondent,
v Donny Payne, appellant.

(Ind. No. 3055/06)

Steven Banks, New York, N.Y. (Martin M. Lucente of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Howard B. Goodman of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Collini, J.), rendered October 17, 2006, convicting him of promoting prostitution in the second degree, criminal contempt in the first degree (three counts), and endangering the welfare of a child, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

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 establish the defendant's guilt beyond a reasonable doubt. 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).

The defendant's arguments regarding alleged prosecutorial misconduct during summation are unpreserved for appellate review (*see CPL 470.05[2]; People v Dien*, 77 NY2d 885; *People v Nuccie*, 57 NY2d 818). In any event, the comments alleged to denigrate the defense were fair comment on the evidence (*see People v Ashwal*, 39 NY2d 105).

September 2, 2008

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The defendant's remaining contentions are unpreserved for appellate review and, in any event, are without merit.

PRUDENTI, P.J., RITTER, FLORIO and McCARTHY, 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