

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

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_____AD3d_____

Submitted - October 14, 2008

PETER B. SKELOS, J.P.
DAVID S. RITTER
EDWARD D. CARNI
THOMAS A. DICKERSON, JJ.

2007-02822

DECISION & ORDER

The People, etc., respondent,
v Howard Evans, appellant.

(Ind. No. 1590/06)

Joseph A. Hanshe, Sayville, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Robert A. Schwartz and Lllisa T. Fleischer of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Nassau County (Robbins, J.), rendered March 14, 2007, convicting him of promoting prison contraband in the first degree and criminal possession of a controlled substance in the fifth degree, 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. Upon our independent review pursuant to 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).

November 12, 2008

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Contrary to the defendant's contention, he was not entitled to a missing witness charge (see generally *People v Savinon*, 100 NY2d 192, 196; *People v Gonzalez*, 68 NY2d 424, 427; see also *People v Marino*, 21 AD3d 430, 432).

SKELOS, J.P., RITTER, CARNI and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court