

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

D21418
G/prt

_____AD3d_____

Argued - November 20, 2008

WILLIAM F. MASTRO, J.P.
HOWARD MILLER
RUTH C. BALKIN
WILLIAM E. McCARTHY, JJ.

2007-00588

DECISION & ORDER

The People, etc., respondent,
v Edward Rodriguez, appellant.

(Ind. No. 3791/05)

Lynn W. L. Fahey, New York, N.Y. (Steven R. Bernhard of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Diane R. Eisner, and Steven A. Mann of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Guzman, J.), rendered September 28, 2006, convicting him of attempted assault in the second degree and criminal possession of a weapon in the fourth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the evidence was legally insufficient to prove his guilt of attempted assault in the second degree beyond a reasonable doubt is unpreserved for appellate review (*see* CPL 470.05; *People v Soto*, 8 AD3d 683, 684; *People v Smith*, 303 AD2d 426, 427). In any event, viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620, 621), we find that it was legally sufficient to show that the defendant intended to cause the complainant physical injury (*see People v Gordon*, 284 AD2d 481, 481-482).

In fulfilling our responsibility to conduct an independent review of the weight of the evidence (*see* CPL 470.15[5]; *People v Danielson*, 9 NY3d 342, 349), we nevertheless accord great deference to the jury's opportunity to view the witnesses, hear the testimony, and observe their demeanor (*see People v Mateo*, 2 NY3d 383, 410, *cert denied* 542 US 946; *People v Bleakley*, 69 NY2d 490, 495). Upon reviewing the record here, we are satisfied that the verdict of guilt was not

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against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

MASTRO, J.P., MILLER, BALKIN and McCARTHY, 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