

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

D21837
O/cb

_____AD3d_____

Argued - December 16, 2008

REINALDO E. RIVERA, J.P.
FRED T. SANTUCCI
EDWARD D. CARNI
THOMAS A. DICKERSON, JJ.

2004-10760

DECISION & ORDER

The People, etc., respondent,
v Andre Rand, a/k/a Frank Rushan, appellant.

(Ind. No. 25/01)

Steven Banks, New York, N.Y. (Steven R. Berko of counsel), for appellant.

Daniel M. Donovan, Jr., District Attorney, Staten Island, N.Y. (Morrie I. Kleinbart and Anne Grady of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Richmond County (Rooney, J.), rendered December 8, 2004, convicting him of kidnapping in the first degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant claims that the evidence was legally insufficient to prove, beyond a reasonable doubt, that he abducted the victim by either secreting or holding her in a place where she was not likely to be found or by using or threatening to use deadly force (*see* Penal Law § 135.00[2]). The defendant's legal insufficiency claim is not preserved for appellate review to the extent it is premised upon whether there was legally sufficient evidence to prove, beyond a reasonable doubt, that he abducted the victim by using or threatening to use deadly force (*see* CPL 470.05[2]; *People v Hawkins*, 11 NY3d 484; *People v Payne*, 3 NY3d 266, 280). In any event, 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 (*see People v Thibodeau*, 267 AD2d 952; *People v Salimi*, 159 AD2d 658).

January 20, 2009

PEOPLE v RAND, ANDRE, a/k/a RUSHAN, FRANK

Page 1.

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), we nevertheless accord great deference to the jury's opportunity to view the witnesses, hear the testimony, and observe 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 against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

The defendant was afforded meaningful representation (*see People v Henry*, 95 NY2d 563; *People v Hobot*, 84 NY2d 1021; *People v Baldi*, 54 NY2d 137; *People v Acevedo*, 44 AD3d 168, 173; *People v Dolan*, 2 AD3d 745; *People v Groomell*, 256 AD2d 356, 357).

The defendant's remaining contentions raised in Points II and III of his brief are not preserved for appellate review.

RIVERA, J.P., SANTUCCI, CARNI and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court