

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

D22093
T/kmg

_____AD3d_____

Submitted - January 20, 2009

PETER B. SKELOS, J.P.
FRED T. SANTUCCI
RUTH C. BALKIN
RANDALL T. ENG, JJ.

2003-08685

DECISION & ORDER

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

(Ind. No. 1791/02)

Robert C. Mitchell, Riverhead, N.Y. (John M. Dowden of counsel), for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Steven A. Hovani of counsel;
Christina Molia Geraci on the brief), for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (Mullen, J.), rendered September 4, 2003, convicting him of kidnapping in the first degree and criminal possession of a weapon in the third degree (two counts), 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, 621), we find that it was legally sufficient to establish the defendant's guilt beyond a reasonable doubt. Moreover, 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's contention that the jury verdict was repugnant is unpreserved for

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appellate review (*see* CPL 470.05[2]; *People v Alfaro*, 66 NY2d 985, 987; *People v Brown*, 38 AD3d 676, 677). In any event, contrary to the defendant's contention, the verdict was not repugnant as a matter of law (*see People v Tucker*, 55 NY2d 1).

Also contrary to the defendant's contention, the trial court did not deny him the right to confront the witnesses against him by its decision to limit his cross-examination of a certain prosecution witness (*see Delaware v Van Arsdall*, 475 US 673, 679; *People v Stevens*, 45 AD3d 610, 611). Nor was the defendant denied his right to a fair trial by the testimony of a certain police officer that markings on the window of a vehicle involved with the subject incident looked like "cleansed markings" (*see People v Russell*, 165 AD2d 327, 332).

The defendant's claim that the prosecutor's allegedly improper summation remarks denied him his right to a fair trial is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Romero*, 7 NY3d 911, 912; *People v Garcia*, 52 AD3d 734). In any event, the challenged remarks did not deny the defendant his right to a fair trial, as "the ... remarks were fair comment on the evidence, permissible rhetorical comment, or responsive to the defense counsel's summation" (*People v Gillespie*, 36 AD3d 626, 627; *see People v Dorgan*, 42 AD3d 505; *People v McHarris*, 297 AD2d 824, 825; *People v Clark*, 222 AD2d 446, 447; *People v Vaughn*, 209 AD2d 459, 460).

The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

The defendant's remaining contentions raised in Point III of his brief are without merit.

SKELOS, J.P., SANTUCCI, BALKIN and ENG, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court