

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

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_____AD3d_____

Argued - February 17, 2009

PETER B. SKELOS, J.P.
STEVEN W. FISHER
FRED T. SANTUCCI
RUTH C. BALKIN, JJ.

2007-04226
2007-07501

DECISION & ORDER

The People, etc., respondent,
v Richard Cary, appellant.

(Ind. Nos. 2089-06, 716-07)

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

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Rosalind Gray of counsel), for respondent.

Appeals by the defendant from (1) a judgment of the Supreme Court, Suffolk County (Mullen, J.), rendered April 16, 2007, convicting him of attempted robbery in the first degree and resisting arrest under Indictment No. 2089-06, upon a jury verdict, and imposing sentence, and (2) a judgment of the same court rendered July 25, 2007, convicting him of assault in the second degree under Indictment No. 716-07, upon his plea of guilty, and imposing sentence.

ORDERED that the judgments are affirmed.

Viewing the evidence adduced at the trial of Indictment No. 2089-06 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. 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

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are satisfied that the verdict of guilt on Indictment No. 2089-06 was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

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

The defendant's remaining contentions are without merit.

SKELOS, J.P., FISHER, SANTUCCI and BALKIN, 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