

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

D22711
O/kmg

_____AD3d_____

Submitted - February 17, 2009

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

2007-03281

DECISION & ORDER

The People, etc., respondent,
v David Ortiz, appellant.

(Ind. No. 06-00622)

Ron Stokes, Mohegan Lake, N.Y., for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (Laurie Sapakoff, Richard Longworth Hecht, and Anthony J. Servino of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Westchester County (Loehr, J.), rendered March 5, 2007, convicting him of robbery in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that the County Court erred in denying his *Batson* challenge (*see Batson v Kentucky*, 476 US 79) because the prosecutor's explanation for striking a black potential juror was pretextual. However, the defendant's challenge was properly denied because he failed to satisfy his burden of demonstrating, under the third prong of the *Batson* analysis, that the facially race-neutral explanation given by the prosecutor was a pretext for racial discrimination (*see People v Payne*, 88 NY2d 172).

Furthermore, 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 under an accomplice theory of liability beyond a reasonable doubt (*see Penal Law § 20.00; People*

April 7, 2009

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v Keitt, 42 NY2d 926; *People v Anaya*, 206 AD2d 380; *People v Mercado*, 114 AD2d 377).

The defendant's remaining contention is unpreserved for appellate review.

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

ENTER:

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

James Edward Pelzer
Clerk of the Court