

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

D23906  
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Argued - June 16, 2009

MARK C. DILLON, J.P.  
HOWARD MILLER  
JOHN M. LEVENTHAL  
CHERYL E. CHAMBERS, JJ.

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2006-10051

DECISION & ORDER

The People, etc., respondent,  
v Pierre Arias, appellant.

(Ind. No. 805/05)

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Mark C. Fang, White Plains, N.Y., for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Johnette Traill, and Karen Wigle Weiss of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Eng, J.), rendered October 4, 2006, convicting him of murder in the second degree and attempted murder in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The court's jury charge concerning the defendant acting in concert with others was proper (*see People v Rivera*, 84 NY2d 766, 769; *People v Guidice*, 83 NY2d 630, 636-637; *People v Monahan*, 114 AD2d 380, 380-81) and did not violate the defendant's due process rights (*see People v Davis*, 273 AD2d 476, 476-477).

The defendant's argument that the evidence was legally insufficient to support his convictions in that it did not sufficiently prove his requisite intent to commit the crimes is unpreserved for appellate review (*see People v Hawkins*, 11 NY3d 484, 492). In any event, viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620, 624), 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*

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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 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).

DILLON, J.P., MILLER, LEVENTHAL and CHAMBERS, 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