

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

D25702
W/hu

_____AD3d_____

Argued - December 8, 2009

MARK C. DILLON, J.P.
ANITA R. FLORIO
L. PRISCILLA HALL
SANDRA L. SGROI, JJ.

2006-11632

DECISION & ORDER

The People, etc., respondent,
v Keith Edwards, appellant.

(Ind. No. 2758/05)

Lynn W. L. Fahey, New York, N.Y. (Steven R. Bernhard of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Ellen C. Abbot, Marilyn A. Filingeri, and Naomi K. Schneidmill of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Lewis, J.), rendered November 28, 2006, convicting him of assault in the first degree and criminal possession of a weapon in the fourth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant failed to preserve for appellate review his contention that the trial court failed to properly admonish the jurors when it released them prior to their overnight recess (*see* CPL 270.40, 310.10[2]; *People v Bonaparte*, 78 NY2d 26, 32; *People v Williams*, 46 AD3d 585; *People v Lumpkin*, 39 AD3d 671; *People v Taylor*, 29 AD3d 713). “Contrary to the defendant’s contention, the failure to give an instruction pursuant to CPL 270.40 and 310.10 is not a mode of proceedings error that need not be preserved (*see People v Bonaparte*, 78 NY2d at 31 n; *People v Kelly*, 11 AD3d 133, 144, *affd* 5 NY3d 116; *People v Jackson*, 230 AD2d 921). In any event, although the court’s admonishments to the jury were less than complete (*see* CJI2d[NY], Jury Separation During Deliberations), the defendant’s contention that the court’s omission deprived him of due process is without merit since, considered in the aggregate, the court’s admonishments to the jury during . . . and throughout the trial ‘adequately conveyed to the jury its function, duties and conduct’ (*People*

v Fleming, 270 AD2d 498, 498)” (*People v Williams*, 46 AD3d at 585-586).

Viewing counsel’s representation of the defendant in its entirety, the defendant was afforded the effective assistance of counsel (*see People v Ellis*, 81 NY2d 854; *People v Baldi*, 54 NY2d 137; *People v Williams*, 46 AD3d at 586).

DILLON, J.P., FLORIO, HALL and SGROI, 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