

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

D25797
O/kmg

_____AD3d_____

Argued - December 11, 2009

PETER B. SKELOS, J.P.
THOMAS A. DICKERSON
PLUMMER E. LOTT
SHERI S. ROMAN, JJ.

2005-01965

DECISION & ORDER

The People, etc., respondent,
v Rosario Serna, appellant.

(Ind. No. 10626/03)

Lynn W. L. Fahey, New York, N.Y. (Kendra L. Hutchinson of counsel), for appellant.

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

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Hollie, J.), rendered February 18, 2005, convicting her of criminal sale of a controlled substance in the third degree and criminal possession of a controlled substance in the third degree, 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), 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). According such deference here, we find that the discrepancies and inconsistencies in the police officers' testimony were not of such magnitude as to render their

testimony incredible. Thus, we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

SKELOS, J.P., DICKERSON, LOTT and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

James Edward Pelzer
Clerk of the Court