

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

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Submitted - January 21, 2010

MARK C. DILLON, J.P.
HOWARD MILLER
RANDALL T. ENG
SHERI S. ROMAN, JJ.

2007-08925

DECISION & ORDER

The People, etc., respondent,
v Wade Dismel, appellant.

(Ind. No. 5568/07)

Lynn W. L. Fahey, New York, N.Y. (Reyna E. Marder of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Anthea H. Bruffee, and Vanessa C. Singh of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Leventhal, J.), rendered September 18, 2007, convicting him of rape in the first degree (four counts), criminal sexual act in the first degree, assault in the second degree, criminal contempt in the second degree (eight counts), and unlawful imprisonment in the second 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 of rape in the first degree (*see* Penal Law § 130.35[1]), criminal sexual act in the first degree (*see* Penal Law § 130.50[1]), and assault in the second degree (*see* Penal Law § 120.05[6]; *People v Taylor*, 94 NY2d 910, 911; *People v Warren*, 22 AD3d 773, 774; *People v Williams*, 302 AD2d 412; *People v Gonzalez*, 136 AD2d 735) 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 factfinder'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, ENG and ROMAN, 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