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

D26228
O/kmg

_____AD3d_____ Argued - January 25, 2010

REINALDO E. RIVERA, J.P.
JOHN M. LEVENTHAL
PLUMMER E. LOTT
LEONARD B. AUSTIN, JJ.

2007-05885 DECISION & ORDER

The People, etc., respondent,
v Aaron Cancel, appellant.

(Ind. No. 7869/05)

Lynn W. L. Fahey, New York, N.Y. (Denise A. Corsi of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Sholom J. Twersky, and Adrienne D. Gonzalez of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Tomei, J.), rendered June 12, 2007, convicting him of murder in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the evidence was legally insufficient to establish that he and another person formed and shared a common intent to murder the victim is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Hawkins*, 11 NY3d 484; *People v Mathis*, 60 AD3d 697, 698; *People v Perez*, 265 AD2d 347, 348). In any event, viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620, 621), we find that it was legally sufficient to establish the defendant's guilt of murder in the second degree beyond a reasonable doubt. The defendant, with the requisite mental state, acted in concert with, and intentionally aided, a second shooter (*see* Penal Law § 20.00; *People v Cheng*, 232 AD2d 651; *People v Johnson*, 162 AD2d 620).

Contrary to the defendant's contentions, the Supreme Court properly declined to dismiss a juror and declare a mistrial on the ground that the juror was grossly unqualified. To find

a juror grossly unqualified, the court must be convinced that the juror would be prevented from rendering an impartial verdict (*see People v Buford*, 69 NY2d 290, 298). Such determination is to be afforded great deference (*see People v Punwa*, 24 AD3d 471, 472; *People v Franklin*, 7 AD3d 966, 967), and we perceive no basis to disturb the determination on appeal.

The defendant was not deprived of the effective assistance of counsel (*see People v Benevento*, 91 NY2d 708; *People v Baldi*, 54 NY2d 137).

RIVERA, J.P., LEVENTHAL, LOTT and AUSTIN, JJ., concur.

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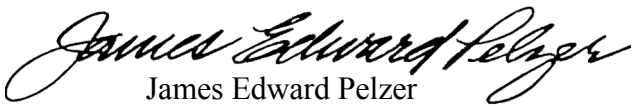

James Edward Pelzer
Clerk of the Court