

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

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Y/hu

_____AD3d_____

Argued - February 2, 2010

PETER B. SKELOS, J.P.
ANITA R. FLORIO
L. PRISCILLA HALL
LEONARD B. AUSTIN, JJ.

2008-05443

DECISION & ORDER

The People, etc., respondent,
v Kirk Gillums, appellant.

(Ind. No. 1581/07)

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

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

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Aloise, J.), rendered June 9, 2008, convicting him of criminal possession of stolen property in the fourth degree and unauthorized use of a vehicle in the third 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 his guilt of criminal possession of stolen property in the fourth degree and unauthorized use of a vehicle in the third degree is not preserved for appellate review (*see People v Finger*, 95 NY2d 894, 895). In any event, 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, upon our independent review pursuant to CPL 470.15(5), we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

March 9, 2010

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The defendant's acquittal on certain robbery charges did not preclude his convictions of criminal possession of stolen property in the fourth degree and unauthorized use of a vehicle in the third degree (*see People v Thomas*, 266 AD2d 571, 572). Moreover, as the People correctly point out, the "jury was free to accept or reject portions of the testimony presented to it" (*People v Martinez*, 63 AD3d 859, 860).

SKELOS, J.P., FLORIO, HALL and AUSTIN, 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