

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

D26514  
W/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - February 5, 2010

STEVEN W. FISHER, J.P.  
DANIEL D. ANGIOLILLO  
JOHN M. LEVENTHAL  
PLUMMER E. LOTT, JJ.

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2007-08455

DECISION & ORDER

The People, etc., respondent,  
v Benjamin Mitchell, appellant.

(Ind. No. 1726/06)

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Lynn W. L. Fahey, New York, N.Y. (Anna Pervukhin and De Nice Powell of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Sharon Y. Brodt, and Rebecca Kramer of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Kron, J.), rendered August 27, 2007, convicting him of robbery in the first degree (three counts), assault in the first degree, and criminal possession of a weapon 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 support his convictions of robbery in the first degree is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Hawkins*, 11 NY3d 484). In any event, viewing the evidence in the light most favorable to the People (*see People v Contes*, 60 NY2d 620, 621), we find that it was legally sufficient to establish the defendant's guilt of those crimes beyond a reasonable doubt (*see People v Phillips*, 68 AD3d 1137). 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,

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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).

The defendant was not deprived of the effective assistance of counsel, as the record reveals that defense counsel provided meaningful representation (*see People v Henry*, 95 NY2d 563; *People v Martinez*, 69 AD3d 958). The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80, 83).

The defendant's remaining contention is without merit.

FISHER, J.P., ANGIOLILLO, LEVENTHAL and LOTT, 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