

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

D27588  
Y/ct

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

Submitted - May 7, 2010

WILLIAM F. MASTRO, J.P.  
FRED T. SANTUCCI  
CHERYL E. CHAMBERS  
SHERI S. ROMAN, JJ.

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2007-10747

DECISION & ORDER

The People, etc., respondent,  
v Shawn Joseph, appellant.

(Ind. No. 7359/06)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Rhea A. Grob of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Sullivan, J.), rendered November 13, 2007, convicting him of robbery in the second degree (two 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 failed to preserve for appellate review his challenge to the legal sufficiency of the identification evidence (*see* CPL 470.05[2]; *People v Hawkins*, 11 NY3d 484, 492). Although the defendant raised an issue as to the sufficiency of the identification evidence in his motion to set aside the verdict, made at sentencing, raising a contention for the first time in such a motion does not preserve it for appellate review (*see People v Padro*, 75 NY2d 820, 821; *People v Stewart*, 71 AD3d 797; *People v Sadler*, 49 AD3d 670). In any event, viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620), we find that there was legally sufficient evidence of the defendant's identification as one of the perpetrators. 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).

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The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80). The defendant's claim that the sentence imposed improperly penalized him for exercising his right to trial is without merit (*see People v Martinez*, 289 AD2d 259, 260).

MASTRO, J.P., SANTUCCI, CHAMBERS and ROMAN, 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