

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

D20937  
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Submitted - October 7, 2008

ROBERT A. SPOLZINO, J.P.  
DAVID S. RITTER  
FRED T. SANTUCCI  
EDWARD D. CARNI, JJ.

2006-04106

DECISION & ORDER

The People, etc., respondent,  
v Timothy Green, appellant.

(Ind. No. 5099/05)

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Joseph F. DeFelice, Kew Gardens, N.Y., for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Victor Barall,  
and David Gunton of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Leventhal, J.), rendered April 24, 2006, convicting him of menacing in the second degree (two counts) and criminal possession of a weapon in the fourth degree (two counts), upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the trial court erred in admitting evidence of two prior break-ins to his estranged wife's apartment is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Rosen*, 81 NY2d 237). In any event, in light of the defendant's contentions that he did not intend to harm his estranged wife and son with a knife he was carrying during the incident in question, the court properly admitted the evidence of the two prior break-ins, *inter alia*, to complete the narrative of the event and establish intent (*see People v Molineux*, 168 NY 264).

The defendant's contention that the trial court erred in failing to give proper limiting instructions concerning the jury's use of the testimony regarding his prior bad acts is unpreserved for

November 5, 2008

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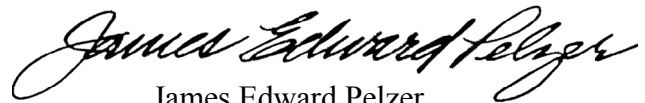
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appellate review (*see* CPL 470.05[2]; *People v Webb*, 1 AD3d 542). In any event, the court gave an appropriate limiting instruction (*cf. People v Norman*, 40 AD3d 1128).

There is no merit to the defendant's contention that the evidence leading to his conviction on one count each of menacing in the second degree and criminal possession of a weapon in the fourth degree regarding his son was legally insufficient. 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 NY2d 633).

SPOLZINO, J.P., RITTER, SANTUCCI and CARNI, 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