

POINT IV

DEFENDANT'S CLAIM THAT THE EVIDENCE WAS LEGALLY INSUFFICIENT IS UNPRESERVED FOR APPELLATE REVIEW AND IS WITHOUT MERIT. MOREOVER, THE VERDICT WAS NOT AGAINST THE WEIGHT OF THE EVIDENCE.

Defendant failed to preserve his claim that the evidence was legally insufficient to prove his guilt beyond a reasonable doubt of Attempted Assault in the Third Degree, Menacing in the Third Degree, and Harassment in the Second Degree (Defendant's Brief at 17-18). Furthermore, the People provided overwhelming evidence of defendant's guilt and the weight of the evidence amply supported the verdict.

Defendant's claim that the evidence was legally insufficient to convict him of all counts is not preserved. Defendant made only a general motion for a trial order of dismissal at the close of the evidence (May 8, 2008: 26, 71-72) and did not specify the grounds that he does now. See C.P.L. § 470.05(2); People v. Finger, 95 N.Y.2d 894, 895 (2000) ("defendant's general motion to dismiss is insufficient to preserve his argument for our review"); People v. Norman, 40 A.D.3d 1128, 1129 (2d Dep't 2007) (same). Under these circumstances, defendant failed to preserve his current claim for appellate review as a matter of law.

Moreover, the evidence was legally sufficient. When evaluating a defendant's legal sufficiency challenge, the reviewing court must decide whether there are logical reasons and inferences that would lead any rational person to conclude that defendant was guilty beyond a reasonable doubt. People v. Romero, 7 N.Y.3d 633, 643 (2006) (citing People v. Bleakley, 69 N.Y.2d 490, 495 [1987]); see also Jackson v. Virginia, 443 U.S. 307, 319 (1979). Furthermore, the court must be satisfied that the proof and burden requirements for every element of the charged crimes have been met. Bleakley, 69 N.Y.2d at 495. This review is conducted in the light most favorable to the prosecution. People v. Contes, 60 N.Y.2d 620, 621 (1983).

A person is guilty of Attempted Assault in the Third Degree when "with intent to cause physical injury to another person, he attempts to cause such injury to such person or to a third person." P.L. §§ 110.00/120.00(1). To be guilty of an attempt, defendant has to "engage in conduct which tends to effect the commission of such crime." P.L. § 110.00; People v. Bracey, 41 N.Y.2d 296, 300 (1997) (defendant must have acted with intent to commit a crime and taken a step, beyond mere preparation, to carry out his intent). Defendant's intent to commit the crime may be inferred from defendant's conduct and the surrounding circumstances. People v. Steinberg, 79 N.Y.2d 673, 682 (1992).

is entitled to use physical force to defend himself to the extent he believes it necessary from the use of unlawful physical force against him by another person. Here, defendant has not established that his conduct was justified. According to defendant's version of events, he had to pin Irina Gelman to his sofa and hit her to stop her from spraying him with an unknown substance. Defendant, however, did not allege after the incident or at trial that this spray caused him any injury or that he had feared any injury. Furthermore, defendant's claim of a thumb injury is not supported by any evidence other than his own testimony. Officer Judd testified that defendant was at the stationhouse for hours after the arrest but he did not complain of any injury. Also, an ambulance was on scene to examine Irina Gelman but there is nothing in the record to show that defendant asked to have anyone look at his thumb.

In sum, the People's witnesses gave credible and consistent testimony setting forth the circumstances under which defendant attempted to assault Irina Gelman. The trial court was entitled to credit Irina Gelman's, Raisa Gelman's and Officer Judd's testimony while rejecting defendant's self-defense claim. Accordingly, the trial court's verdict is well-supported by the testimony of the People's witnesses and was not against the weight of the evidence. His claim to the contrary should be rejected and his conviction upheld.