

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

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Y/hu

_____AD3d_____

Argued - September 26, 2006

HOWARD MILLER, J.P.
DAVID S. RITTER
REINALDO E. RIVERA
ROBERT A. LIFSON, JJ.

2004-03924

DECISION & ORDER

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

(Ind. No. 8128/02)

Lynn W. L. Fahey, New York, N.Y. (Erica Horwitz of counsel), for appellant, and appellant pro se.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Keith Dolan of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Tomei, J.), rendered April 16, 2004, convicting him of murder in the second 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 contentions regarding alleged prosecutorial misconduct during summation are unpreserved for appellate review (*see* CPL 470.05[2]; *People v Nuccie*, 57 NY2d 818, 819; *People v George*, 2 AD3d 457). In any event, the challenged remarks do not require reversal (*see People v Tardbania*, 72 NY2d 852, 853).

The defendant was not deprived of the effective assistance of counsel (*see People v Benevento*, 91 NY2d 708, 714; *People v Baldi*, 54 NY2d 137, 147).

November 8, 2006

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The defendant's contentions raised in Point One of his main brief relating to an alleged violation by the prosecutor of the court's *Sandoval* ruling (*see People v Sandoval*, 34 NY2d 371), as well as those contentions raised in Point One of his supplemental pro se brief relating to his right to be present and Point Three of his supplemental pro se brief relating to his right to confront witnesses are unpreserved for appellate review. His claim raised in Point Two of his supplemental pro se brief relating to the hearing testimony of police witnesses is without merit.

MILLER, J.P., RITTER, RIVERA and LIFSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer
Clerk of the Court