

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

D12586
Y/cb

_____AD3d_____

Submitted - October 3, 2006

GABRIEL M. KRAUSMAN, J.P.
REINALDO E. RIVERA
ROBERT A. SPOLZINO
ROBERT A. LIFSON, JJ.

2004-05070

DECISION & ORDER

The People, etc., respondent,
v Hector Frazier, appellant.

(Ind. No. 501/03)

Lynn W. L. Fahey, New York, N.Y. (Reyna E. Marder of counsel), for appellant,
and appellant pro se.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,
Michael Tarbutton, and Sharon Y. Brodt of counsel; Seth Presser and Ann Marie
Giblin on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County
(Aloise, J.), rendered May 13, 2004, convicting him of robbery in the first degree, upon a jury verdict,
and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that he was deprived of a fair trial by improper remarks
made by the prosecutor during his summation. The defendant has not preserved for appellate review
his claims that the prosecutor improperly vouched for the credibility of the complaining witness's
identification testimony and for the strength of the People's case, as well as improperly commented
on the size of the weapon used in the robbery. In any event, any errors were harmless in light of the
overwhelming evidence of the defendant's guilt, which included the complainant's in-court
identification of the defendant as the perpetrator and the fingerprint evidence linking the defendant
to the scene of the robbery (*see People v Crimmins*, 36 NY2d 230; *People v Rivera*, 19 AD3d 620,
620; *People v Sanders*, 280 AD2d 560, 560-561).

December 19, 2006

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The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

The contention raised in the appellant's supplemental pro se brief, relating to the issue of whether a chart used as demonstrative evidence by the People's expert witness should have been disclosed to him as *Rosario* material (*see People v Rosario*, 9 NY2d 286, *cert denied* 368 US 866), is unpreserved for appellate review and, in any event, is without merit. The remaining contentions raised in the supplemental pro se brief are without merit.

KRAUSMAN, J.P., RIVERA, SPOLZINO and LIFSON, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court