

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

D17269
W/cb

_____AD3d_____

Argued - November 26, 2007

HOWARD MILLER, J.P.
STEPHEN G. CRANE
MARK C. DILLON
RUTH C. BALKIN, JJ.

2003-07216

DECISION & ORDER

The People, etc., respondent,
v Jose Ortiz, appellant.

(Ind. No. 3891/01)

Lynn W. L. Fahey, New York, N.Y. (Joshua M. Levine of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Jeanette Lifschitz, Rebecca Kramer, and Ayelet Sela of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Braun, J.), rendered July 14, 2003, convicting him of robbery in the first degree (three counts) and robbery in the third degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

On appeal, the defendant contends that reversal is warranted because of the prosecutor's improper summation, which allegedly denigrated the defense, shifted the burden of proof, and urged the jury to aggregate the proof of separate crimes. Since the defendant failed to object to one of the remarks now claimed to have been improper, his argument regarding that remark is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Fleming*, 70 NY2d 947, 948; *People v Bryan*, 2 AD3d 452, 453). In any event, any error was harmless (*see People v Crimmins*, 36 NY2d 230).

December 11, 2007

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

MILLER, J.P., CRANE, DILLON and BALKIN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court