

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

D17381
O/cb

_____AD3d_____

Argued - November 5, 2007

HOWARD MILLER, J.P.
DAVID S. RITTER
PETER B. SKELOS
JOSEPH COVELLO, JJ.

2004-10979

DECISION & ORDER

The People, etc., respondent,
v Donald Jones, appellant.

(Ind. No. 4437/03)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Diane R. Eisner of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Gerges, J.), rendered December 8, 2004, convicting him of murder in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's claims that the prosecutor conducted improper cross-examinations and an improper summation are unpreserved for appellate review (*see* CPL 470.05[2]). In the few instances when the defendant did object, he either made only general objections or failed to request a curative instruction when an objection was sustained (*see People v Aponte*, 28 AD3d 672; *People v Haripersaud*, 24 AD3d 468, 469; *People v Portalatin*, 18 AD3d 673, 674). In any event, to the extent that any of the questioning or comments made during summation were improper, any error was harmless (*see People v Crimmins*, 36 NY2d 230, 237; *People v Colon*, 43 AD3d 951; *People v Love*, 37 AD3d 618, 619; *People v Frazier*, 35 AD3d 759, 759-760).

The defendant's challenge in his supplemental pro se brief to the legal sufficiency of

December 18, 2007

Page 1.

PEOPLE v JONES, DONALD

the evidence is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Gray*, 86 NY2d 10, 19-21). In any event, 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 the exercise of our factual review power (*see* 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 NY3d 633).

The defendant's remaining contentions, raised in his supplemental pro se brief, are unpreserved for appellate review (*see* CPL 470.05[2]) and, in any event, are without merit.

MILLER, J.P., RITTER, SKELOS and COVELLO, 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