

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

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_____AD3d_____

Argued - December 3, 2007

STEPHEN G. CRANE, J.P.
REINALDO E. RIVERA
ANITA R. FLORIO
RUTH C. BALKIN, JJ.

2005-09223

DECISION & ORDER

The People, etc., respondent,
v Ivan Bueno, appellant.

(Ind. No. 10957/04)

Lynn W. L. Fahey, New York, N.Y. (Jonathan Garvin of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Johnnette Traill, and Ayelet Sela of counsel), for respondent.

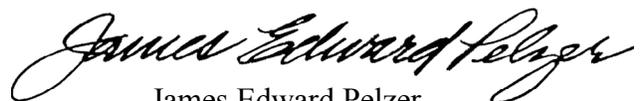
Appeal by the defendant from a judgment of the Supreme Court, Queens County (Braun, J.), rendered September 12, 2005, convicting him of criminal sale of marijuana in the fourth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

“[A]bsent bad faith . . . the prosecutor’s failure to prove every statement in his or her opening will not result in a jury’s verdict being reversed” (*People v Zienkowitz*, 213 AD2d 435, 436; see *People v De Tore*, 34 NY2d 199, 207, cert denied sub nom. *Wedra v New York*, 419 US 1025; *People v Pierre*, 35 AD3d 893; *People v Thompson*, 276 AD2d 811; *People v Seabrooks*, 244 AD2d 514). In this instance, the prosecutor offered a good faith basis for believing he would be able to offer competent proof of the statement at issue, notwithstanding that one police detective witness would not be available for the trial.

CRANE, J.P., RIVERA, FLORIO and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

January 8, 2008

PEOPLE v BUENO, IVAN