

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

D18129
X/nl

_____AD3d_____

Submitted - January 22, 2008

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
DANIEL D. ANGIOLILLO
EDWARD D. CARNI, JJ.

2005-05465

DECISION & ORDER

The People, etc., respondent,
v Rudolph Dick, appellant.

(Ind. No. 8822/03)

Lynn W. L. Fahey, New York, N.Y. (Julie A. Kleeman of counsel), for appellant.

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

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Marrus, J.), rendered June 21, 2005, convicting him of manslaughter in the first degree, assault in the first degree, and criminal possession of a weapon in the second degree, upon a jury verdict, and imposing sentencing.

ORDERED that the judgment is affirmed.

The defendant's contention that the prosecutor's summation deprived him of a fair trial is unpreserved for appellate review, since the defendant failed to object or raised only general objections to the prosecutor's summation remarks (*see* CPL 470.05[2]; *People v Tonge*, 93 NY2d 838; *People v Almonte*, 23 AD3d 392, 394; *People v Martinez*, 17 AD3d 484, 485). In any event, most of the challenged remarks were fair comment on the evidence, permissible rhetorical comment, or responsive to the defense counsel's summation (*see People v Ashwal*, 39 NY2d 105, 109-110; *People v Carter*, 36 AD3d 624; *People v Martinez*, 17 AD3d at 485; *People v Rhodes*, 11 AD3d 487, 488; *People v Valdes*, 291 AD2d 513, 514). "To the extent that the prosecutor may have exceeded the bounds of permissible rhetorical comment, any error was harmless" (*People v Carter*, 36 AD3d 624, 624; *see People v Crimmins*, 36 NY2d 230).

February 19, 2008

Page 1.

PEOPLE v DICK, RUDOLPH

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

SPOLZINO, J.P., SANTUCCI, ANGIOLILLO and CARNI, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court