

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

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Submitted - March 14, 2008

PETER B. SKELOS, J.P.
JOSEPH COVELLO
RANDALL T. ENG
JOHN M. LEVENTHAL, JJ.

2006-06165

DECISION & ORDER

The People, etc., respondent,
v Jason Daley, appellant.

(Ind. No. 7353/04)

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 and Lori Glachman of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Tomei, J.), rendered May 15, 2006, convicting him of rape in the first degree, robbery in the first degree, and sodomy in the first degree (two counts), upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's challenge to the prosecutor's statement encouraging the jury to "tell" the defendant "that what he did was wrong . . . [and] awful" does not warrant reversal, since the trial court's actions in response to the challenged remark were sufficient to avert any substantial prejudice to the defendant (*see People v German*, 45 AD3d 861, 862, *lv denied* 9 NY3d 1034; *People v Bossett*, 45 AD3d 693; *People v Wright*, 40 AD3d 1021; *People v Ivory*, 307 AD2d 1000, 1001). The defendant's remaining claims of prosecutorial misconduct are unpreserved for appellate review, since the defendant failed to object to the allegedly improper comments and failed to request curative

instructions or move for a mistrial on the grounds now argued on appeal (*see* CPL 470.05[2]; *People v Medina*, 53 NY2d 951, 952; *People v German*, 45 AD3d 861, *lv denied* 9 NY3d 1034; *People v Wright*, 40 AD3d 1021; *People v Ivory*, 307 AD2d 1000, 1001). In any event, to the extent that any of the remarks were improper, any error was harmless (*see People v Crimmins*, 36 NY2d 230, 242).

SKELOS, J.P., COVELLO, ENG and LEVENTHAL, 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