

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

D19529
O/kmg

_____AD3d_____

Submitted - May 2, 2008

WILLIAM F. MASTRO, J.P.
ROBERT A. SPOLZINO
RUTH C. BALKIN
JOHN M. LEVENTHAL, JJ.

2005-06912

DECISION & ORDER

The People, etc., respondent,
v Paul Rembert, appellant.

(Ind. No. 04-01671)

Joshua D. Siegel, Hartsdale, N.Y., for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (Hae Jin Liu, Richard Longworth Hecht, and Anthony J. Servino of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Westchester County (Adler, J.), rendered July 7, 2005, convicting him of criminal possession of a weapon in the third degree, criminal trespass in the second degree, and possession of burglar's tools, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

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 contention that the trial court erred in failing to charge the jury on the defense of justification is unpreserved for appellate review (*see* CPL 470.05[2]). In any event, the trial court properly denied the defendant's request for a justification charge since no reasonable view of the evidence supported such a charge (*see People v Cox*, 92 NY2d 1002).

The trial court providently exercised its discretion in denying the defendant's motion

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for a mistrial. Any prejudice to the defendant that might have resulted from the testimony of the prosecution's witness was alleviated by the trial court's prompt curative instructions to the jury (*see People v Brescia*, 41 AD3d 613; *People v Smith*, 23 AD3d 415; *People v Boston*, 296 AD2d 576, 577).

The sentence imposed was not excessive (*see People v Thompson*, 60 NY2d 513, 519; *People v Suitte*, 90 AD2d 80).

MASTRO, J.P., SPOLZINO, BALKIN and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court