

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

D19654
O/hu

_____AD3d_____

Argued - May 13, 2008

FRED T. SANTUCCI, J.P.
HOWARD MILLER
DANIEL D. ANGIOLILLO
WILLIAM E. McCARTHY, JJ.

2005-09628

DECISION & ORDER

The People, etc., respondent,
v George Ploska, appellant.

(Ind. No. 13/04)

Simon & Partners, LLP, New York, N.Y. (Brian Waller of counsel), for appellant.

Adam B. Levy, District Attorney, Carmel, N.Y. (Makaria Gallagher of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Putnam County (Rooney, J.), rendered June 14, 2005, convicting him of sexual abuse in the first degree (two counts) and endangering the welfare of a child (three counts), upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, under the circumstances of this case, the testimony offered by the People on rebuttal was admissible for the purpose of disproving his claim that, as a result of brain damage caused by the onset of multiple sclerosis, he was not guilty by reason of mental disease or defect (*see* Penal Law § 30.05; *People v Santarelli*, 49 NY2d 241; *People v Schicchi*, 13 AD3d 470). The record does not support the defendant's contention that the court failed to weigh the probative value of the testimony with the potential for prejudice (*cf. People v Santarelli*, 49 NY2d 241).

The defendant's further contention that the prosecutor, during summation, deprived him of a fair trial by making prejudicial comments, ridiculing the defense, and inflaming the emotions

June 17, 2008

Page 1.

PEOPLE v PLOSKA, GEORGE

of the jury, is without merit. The comments alleged to be inflammatory and prejudicial were either fair comment on the evidence (*see People v Ashwal*, 39 NY2d 105), responsive to arguments and theories presented in the defense summation (*see People v Galloway*, 54 NY2d 396), or harmless (*see People v Crimmins*, 36 NY2d 230, 241).

The defendant was not denied the effective assistance of counsel (*see People v Turner*, 5 NY3d 476; *People v Benevento*, 91 NY2d 708).

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

The defendant's remaining contention is unpreserved for appellate review and, in any event, is without merit.

SANTUCCI, J.P., MILLER, ANGIOLILLO and McCARTHY, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court