

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

D19816
G/prt

_____AD3d_____

Argued - May 27, 2008

WILLIAM F. MASTRO, J.P.
ROBERT A. SPOLZINO
DAVID S. RITTER
JOHN M. LEVENTHAL, JJ.

2006-07792

DECISION & ORDER

The People, etc., respondent,
v Raymond Vankenie, appellant.

(Ind. No. 5018/05)

Steven Banks, New York, N.Y. (Natalie Rea of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Morgan J. Dennehy of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Carroll, J.), rendered July 14, 2006, convicting him of attempted assault in the second degree (two counts) and criminal possession of a weapon in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the trial court providently exercised its discretion in precluding the testimony of a detective investigator regarding a complainant's purported motive to fabricate. While proof tending to establish a motive to fabricate is never collateral and may not be excluded on that ground, such proof may be excluded when, as here, it is too remote and speculative (*see People v Monroe*, 30 AD3d 616, 617; *People v Sawyer*, 304 AD2d 775, 776; *People v Hoover*, 298 AD2d 599).

The defendant's contention, in effect, that the jury's verdict was repugnant is unpreserved for appellate review (*see CPL 470.05[2]*; *People v Romgobind*, 40 AD3d 1133; *People v Brown*, 38 AD3d 676, 677). In any event, the verdict was not repugnant since the acquittal on the counts of attempted murder in the second degree, attempted assault in the first degree, and a third

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count of attempted assault in the second degree did not negate any of the elements of criminal possession of a weapon in the second degree (*see People v Brown*, 38 AD3d at 677; *People v Smith*, 23 AD3d 416, 417; *People v Gatling*, 222 AD2d 606). Upon the exercise of our factual review power (*see* CPL 470.15[5]), we are satisfied that the verdict of guilt of criminal possession of a weapon in the second degree was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80, 85-86).

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

ENTER:

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

James Edward Pelzer
Clerk of the Court