

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

D19919
G/kmg

_____AD3d_____

Argued - June 6, 2008

REINALDO E. RIVERA, J.P.
ROBERT A. LIFSON
JOSEPH COVELLO
RUTH C. BALKIN, JJ.

2005-11100

DECISION & ORDER

The People, etc., respondent,
v Emmanuel Kanios, appellant.

(Ind. No. 1429/03)

Mischel & Horn, P.C., New York, N.Y. (Richard E. Mischel and Lisa R. Marlow Wolland of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Nicoletta J. Caferri, and Daniel Bresnahan of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Kohm, J.), rendered October 25, 2005, convicting him of manslaughter in the second degree and felony leaving the scene without reporting, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620), we find that it was legally sufficient to establish the defendant's guilt of manslaughter in the second degree beyond a reasonable doubt (*see People v Jenneman*, 37 AD3d 736, 737; *People v Henrius*, 6 AD3d 548; *People v Wolz*, 300 AD2d 606; *People v Miller*, 286 AD2d 981; *People v Poliakov*, 167 AD2d 115, 116). Moreover, 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 challenge to the prosecutor's summation is unpreserved for appellate review since the defendant made only general objections, failed to request curative instructions, and

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did not timely move for a mistrial on the ground that any remarks were improper (*see* CPL 470.05[2]; *People v Balls*, 69 NY2d 641, 642; *People v Salnave*, 41 AD3d 872, 874). In any event, the comments alleged to be prejudicial were all either fair comment on the evidence (*see People v Ashwal*, 39 NY2d 105), or responsive to arguments and theories presented in the defense summation (*see People v Galloway*, 54 NY2d 396). The prosecutor's summation comment about the defendant's departure from the scene of the crime did not impermissibly shift the burden of proof (*see People v Moore*, 29 AD3d 825).

RIVERA, J.P., LIFSON, COVELLO and BALKIN, 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