

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

D19988
X/prt

_____AD3d_____

Submitted - June 10, 2008

DAVID S. RITTER, J.P.
HOWARD MILLER
MARK C. DILLON
WILLIAM E. McCARTHY, JJ.

2006-06495

DECISION & ORDER

The People, etc., respondent,
v Sean Lanier, appellant.

(Ind. No. 10753/05)

Steven Banks, New York, N.Y. (Laura Lieberman Cohen of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,
Sharon Y. Brodt, and Jennifer S. Michael of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Blumenfeld, J.), rendered June 29, 2006, convicting him of criminal sale of a controlled substance in the third degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that he was denied a fair trial because the court permitted a police detective to testify about the roles of participants in a street-level narcotics sale is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Romero*, 7 NY3d 911, 912; *People v Salnave*, 41 AD3d 872; *People v Malave*, 7 AD3d 542). In any event, given that the theory of the prosecution was that the defendant and a codefendant acted in concert in the sale of narcotics, the challenged testimony was not improper (*see People v Brown*, 97 NY2d 500, 505).

The defendant also failed to preserve for appellate review his contention that certain comments made by the prosecutor during summation deprived him of a fair trial, as he failed to object to the subject remarks (*see* CPL 470.05[2]; *People v Romero*, 7 NY3d at 912; *People v Malave*, 7 AD3d 542). In any event, the challenged remarks did not exceed the bounds of rhetorical comment

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permissible in closing argument and were fair comment upon the evidence (*cf. People v Arce*, 42 NY2d 179, 189-190; *People v Ashwal*, 39 NY2d 105, 109).

RITTER, J.P., MILLER, DILLON and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer
Clerk of the Court