

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

D20242  
G/hu

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - June 17, 2008

A. GAIL PRUDENTI, P.J.  
DAVID S. RITTER  
ANITA R. FLORIO  
WILLIAM E. McCARTHY, JJ.

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2006-02379

DECISION & ORDER

The People, etc., respondent,  
v Ernestine Dunn, appellant.

(Ind. No. 2838/05)

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Lynn W. L. Fahey, New York, N.Y. (Kendra L. Hutchinson of counsel), for appellant.

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

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Sullivan, J.), rendered February 23, 2006, convicting her of criminal sale of a controlled substance in the third degree and criminal possession 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 she was deprived of a fair trial because the prosecutor made improper remarks during her opening statement and summation and otherwise engaged in misconduct during the trial is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Hollenquest*, 48 AD3d 592, *lv denied* 10 NY3d 864). In any event, the challenged remarks and conduct either were responsive to arguments made by defense counsel, constituted fair comment on the evidence, or otherwise did not deprive the defendant of a fair trial (*see People v Olivo*, 23 AD3d 584).

September 16, 2008

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The defendant's contention that she was denied the effective assistance of counsel based solely on her attorney's failure to object to the alleged prosecutorial misconduct is without merit (*see People v Benevento*, 91 NY2d 708, 712; *People v Robbins*, 48 AD3d 711, *lv denied* 10 NY3d 869; *People v Gonzalez*, 44 AD3d 790, 791; *People v Serrano*, 163 AD2d 66, 68).

PRUDENTI, P.J., RITTER, FLORIO and McCARTHY, 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