

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

D20986
W/prt

_____AD3d_____

Argued - October 17, 2008

WILLIAM F. MASTRO, J.P.
REINALDO E. RIVERA
JOSEPH COVELLO
JOHN M. LEVENTHAL, JJ.

2006-09953

DECISION & ORDER

The People, etc., respondent,
v Mario Nisvis, appellant.

(Ind. No. 6645/05)

Lynn W. L. Fahey, New York, N.Y. (Michael Dang and Steven R. Bernhard of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Thomas M. Ross, and Clifford Chance US LLP [Christian A. Cavallo and Evan M. Newman] of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Collini, J.), rendered October 11, 2006, convicting him of criminal possession of a controlled substance in the third degree (two counts), criminal possession of a controlled substance in the seventh degree, criminal sale of marijuana in the fourth degree, and criminal possession of marijuana in the fourth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

All but one of the defendant's challenges to remarks made by the prosecutor during summation are unpreserved for appellate review, since he either failed to object or raised only general objections to the remarks, did not request curative instructions when his objections were sustained, and failed to move timely for a mistrial (*see* CPL 470.05[2]; *People v Almonte*, 23 AD3d 392, 394). In any event, most of the challenged remarks were either responsive to the arguments and issues raised by the defense or fair comment on the evidence (*see People v Montalvo*, 34 AD3d 600, 601). To the extent certain of the remarks were improper, they did not deprive the defendant of a fair trial (*see People v Almonte*, 23 AD3d at 394).

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The defendant's one preserved challenge was that a comment made by the prosecutor improperly shifted the burden of proof. With respect to that challenge, the trial court remedied that impropriety in its instructions to the jury (*see People v Evans*, 291 AD2d 569).

MASTRO, J.P., RIVERA, COVELLO and LEVENTHAL, 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