

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

D21890  
Y/kmg

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

Submitted - November 21, 2008

PETER B. SKELOS, J.P.  
MARK C. DILLON  
FRED T. SANTUCCI  
JOSEPH COVELLO, JJ.

---

2005-10339

DECISION & ORDER

The People, etc., respondent,  
v Roger Woods, appellant.

(Ind. No. 5906/04)

---

David L. Rich, White Plains, N.Y., for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Sholom J. Twersky, and Richard J.L. Lomuscio of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Feldman, J.), rendered October 18, 2005, convicting him of murder in the second degree, assault in the first degree, and assault in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's arguments regarding the comments made by the prosecutor during summation are unpreserved for appellate review in light of defense counsel's failure to object to any of the comments (*see* CPL 470.05[2]). In any event, the comments were within the bounds of permissible rhetoric and were fair comments on the evidence (*see People v Galloway*, 54 NY2d 396; *People v McHarris*, 297 AD2d 824, 825). In addition, the jury is presumed to have followed the court's instructions on the elements of the crimes charged and the standards by which to assess the evidence (*see People v Guerrier*, 291 AD2d 506, 507).

The defendant's contention that he was penalized for going to trial rather than accepting a plea offer is without merit (*see People v Delgado*, 80 NY2d 780; *People v Ramsey*, 48 AD3d 709; *People v Evans*, 16 AD3d 595; *People v Hinton*, 285 AD2d 476).

February 3, 2009

Page 1.

PEOPLE v WOODS, ROGER

The sentence imposed was not excessive (*see People v Delgado*, 80 NY2d 780; *People v Suitte*, 90 AD2d 80).

SKELOS, J.P., DILLON, SANTUCCI and COVELLO, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court