

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

D22126
O/kmg

_____AD3d_____

Submitted - December 19, 2008

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
RUTH C. BALKIN
RANDALL T. ENG, JJ.

2007-02773

DECISION & ORDER

The People, etc., respondent,
v Gustavo Sepulveda, appellant.

(Ind. No. 1746/06)

Lynn W. L. Fahey, New York, N.Y. (Benjamin D. Gold of counsel), for appellant.

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

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Sullivan, J.), rendered March 12, 2007, convicting him of assault in the second degree and criminal possession of a weapon in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's challenge to the legal sufficiency of the evidence is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Hawkins*, 11 NY3d 484). In any event, 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 his guilt beyond a reasonable doubt.

In fulfilling our responsibility to conduct an independent review of the weight of the evidence (*see* CPL 470.15[5]; *People v Danielson*, 9 NY3d 342, 349), we nevertheless accord great deference to the jury's opportunity to view the witnesses, hear the testimony, and observe their demeanor (*see People v Mateo*, 2 NY3d 383, 410, *cert denied* 542 US 946; *People v Bleakley*, 69 NY2d 490, 495). Upon reviewing the record here, we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633). Any inconsistencies between

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the complainant's testimony and that of the other witnesses were minor and did not render their testimony incredible or unreliable (*see People v Fields*, 28 AD3d 789).

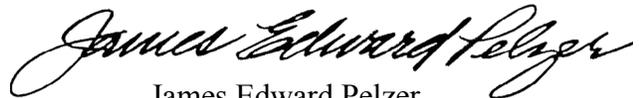
The defendant's contention that the prosecutor's summation denied him due process and a fair trial is unpreserved for appellate review, as he failed to object to the remarks he now contests (*see* CPL 470.05[2]; *People v Romero*, 7 NY3d 911, 912; *People v Small*, 45 AD3d 705). In any event, a review of the challenged comments reveals that they were either responsive to defense counsel's summation or fair comment on the evidence (*see People v Siriani*, 27 AD3d 670; *People v McHarris*, 297 AD2d 824, 825; *People v Russo*, 201 AD2d 512, 513).

The defendant's contention that defense counsel's failure to preserve for appellate review his claim that the verdict was legally insufficient and his failure to object to any of the challenged summation comments denied him the effective assistance of counsel is without merit. The defense counsel provided "meaningful representation" over the course of the trial (*People v Benevento*, 91 NY2d 708, 710; *see People v Jean*, 21 AD3d 499; *People v Daly*, 20 AD3d 542).

The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80, 83).

MASTRO, J.P., FLORIO, BALKIN and ENG, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court