

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

D22286
C/hu

_____AD3d_____

Submitted - February 2, 2009

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
DANIEL D. ANGIOLILLO
JOHN M. LEVENTHAL, JJ.

2007-06871

DECISION & ORDER

The People, etc., respondent,
v Claude Linley, appellant.

(Ind. No. 400/06)

Lynn W. L. Fahey, New York, N.Y. (Denise A. Corsí of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Victor Barall, and Theodore K. Cheng of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Holdman, J.), rendered June 14, 2007, convicting him of attempted grand larceny in the third degree and criminal possession of stolen property in the fifth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's assertion that the trial court erred in denying his *Batson* challenge (*see Batson v Kentucky*, 476 US 79) is unpreserved for appellate review and, in any event, is without merit. The prosecutor's race-neutral explanations for using a peremptory challenge against a prospective black juror are supported by the record, and the defendant "failed to carry his ultimate burden of demonstrating discrimination by showing that these reasons were pretextual" (*People v Thompson*, 45 AD3d 876, 877).

Additionally, the defendant's contention that the prosecutor made inappropriate remarks during summation is unpreserved for appellate review, as the defendant failed to object during the trial (*see People v Robbins*, 48 AD3d 711, 711). In any event, the comments complained

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of fall within “the broad bounds of rhetorical comment permissible in closing arguments” (*People v Stewart*, 51 AD3d 826, 827).

The defendant’s remaining contention is unpreserved for appellate review (*see People v Tucker*, 55 NY2d 1, 9; *People v Giuca*, 58 AD3d 750) and, in any event, is without merit (*see People v Canty*, 60 NY2d 830, 831-832).

FISHER, J.P., COVELLO, ANGIOLILLO 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