

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

D22425
G/cb

_____AD3d_____

Argued - February 10, 2009

A. GAIL PRUDENTI, P.J.
DAVID S. RITTER
FRED T. SANTUCCI
JOSEPH COVELLO, JJ.

2006-10561

DECISION & ORDER

The People, etc., respondent,
v Jonathan Banyan, appellant.

(Ind. No. 1516/06)

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, Jodi L. Mandel, and Danielle Gurkin of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Collini, J.), rendered November 9, 2006, convicting him of criminal possession of a weapon in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Most of the remarks in the prosecutor's summation that are challenged by the defendant on appeal constituted a fair response to defense counsel's summation or fair comment on the evidence, were within the bounds of permissible rhetorical comment, or were the subject of effective curative instructions by the trial court (*see People v Halm*, 81 NY2d 819; *People v Turner*, 214 AD2d 594; *People v Peterson*, 186 AD2d 231, 232). While some of the remarks were improper, they were "not so flagrant or pervasive as to deny the defendant a fair trial" (*People v Almonte*, 23 AD3d 392, 394; *see People v Morales*, 168 AD2d 85, 90) and, thus, reversal is not warranted (*see People v Galloway*, 54 NY2d 396; *People v Almonte*, 23 AD3d at 394; *People v Roopchand*, 107 AD2d 35, 36, *affd* 65 NY2d 837).

March 17, 2009

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The defendant's remaining contention is without merit.

PRUDENTI, P.J., RITTER, SANTUCCI and COVELLO, 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