

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

D22627
W/kmg

_____AD3d_____

Argued - February 23, 2009

ROBERT A. SPOLZINO, J.P.
ANITA R. FLORIO
HOWARD MILLER
RANDALL T. ENG, JJ.

2007-01527

DECISION & ORDER

The People, etc., respondent,
v Raphael Parnell, appellant.

(Ind. No. 1414/05)

Steven Banks, New York, N.Y. (William B. Carney of counsel), for appellant.

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

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Holdman, J), rendered January 19, 2007, convicting him of criminal possession of a controlled substance in the third degree and criminal possession of a controlled substance in the fourth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The Supreme Court properly granted the People's reverse-*Batson* application (*see Batson v Kentucky*, 476 US 79; *People v Kern*, 75 NY2d 638). The record supports the court's finding of pretext with regard to the two prospective jurors at issue, and that finding is entitled to great deference (*see People v Hernandez*, 75 NY2d 350). Although defense counsel provided race-neutral reasons for challenging the two jurors, the record establishes that defense counsel did not challenge other jurors with similar backgrounds (*see People v McLaurin*, 47 AD3d 843, 843; *People v Quito*, 43 AD3d 411, 413). Accordingly, the two challenged jurors were properly seated.

Further, the court properly concluded that a deliberating juror was not grossly unqualified to serve on the jury since, after expressing a generalized concern for his safety, he was

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not certain that he had seen the defendant in his neighborhood and he assured the court that he would remain fair and impartial (*see* CPL 270.35[1]; *People v Buford*, 69 NY2d 290; *People v Banks*, 33 AD3d 385, 385-386; *People v Bunch*, 278 AD2d 501, 502; *People v Attanasio*, 191 AD2d 447, 448).

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

SPOLZINO, J.P., FLORIO, MILLER and ENG, 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