

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

D23525  
O/hu

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

Argued - May 5, 2009

ANITA R. FLORIO, J.P.  
HOWARD MILLER  
JOSEPH COVELLO  
LEONARD B. AUSTIN, JJ.

2007-04337

DECISION & ORDER

The People, etc., respondent,  
v Donald Edwards, appellant.

(Ind. No. 1825/06)

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Lynn W. L. Fahey, New York, N.Y. (Chadbourne & Parke, LLP [Thomas E. Butler and Caroline Pignatelli], of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Ellen C. Abbot, and Daniel Fenn of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Latella, J.), rendered April 20, 2007, convicting him of possession of burglar's tools, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the People's contention, the defendant's argument that the cumulative effects of the prosecutor's improper comments on summation substantially prejudiced his right to a fair trial was preserved for appellate review. However, while some of the prosecutor's comments in his summation somewhat exceeded the bounds of permissible commentary, they were the subject of timely objections by counsel, which were sustained and followed by prompt curative instructions. Thus, while it is true that the jury heard the improper remarks, and the bell could not be unrung (*see Matter of Enright v Siedlecki*, 59 NY2d 195, 198; *People v Griffin*, 242 AD2d 70, 73), under the

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circumstances, when considering the comments individually or cumulatively, the defendant was not denied a fair trial (*see People v Riback*, 57 AD3d 1209; *cf. People v Calabria*, 94 NY2d 519, 523; *People v Gordon*, 50 AD3d 821).

FLORIO, J.P., MILLER, COVELLO and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court