

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

D23902
T/hu

_____AD3d_____

Argued - March 26, 2009

ROBERT A. SPOLZINO, J.P.
MARK C. DILLON
ANITA R. FLORIO
ARIEL E. BELEN, JJ.

2006-05757

DECISION & ORDER

The People, etc., respondent,
v Jeffrey Hiers, appellant.

(Ind. No. 1007/05)

Lynn W. L. Fahey, New York, N.Y., for appellant, and appellant pro se.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,
Sharon Y. Brodt, and Howard McCallum of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Lasak, J.), rendered May 17, 2006, convicting him of robbery in the first degree (two counts), assault in the first degree (two counts), criminal possession of a weapon in the second degree, and criminal possession of a weapon in the third degree (two counts), and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contentions with respect to the comments made by the prosecutor during summation are unpreserved for appellate review since the defendant either failed to object to them or, after an objection was sustained, failed to either request further curative instructions or timely move for a mistrial based on those comments, and we decline to review them in the exercise of our interest of justice jurisdiction (*see* CPL 470.05[2]; *People v Balls*, 69 NY2d 641, 642; *People v Torres*, 46 AD3d 925; *People v Arnold*, 170 AD2d 610).

The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80, 85).

July 7, 2009

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The defendant's contentions raised in his supplemental pro se brief are without merit.

SPOLZINO, J.P., DILLON, FLORIO and BELEN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, looping initial "J".

James Edward Pelzer
Clerk of the Court