

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

D24898
O/kmg

_____AD3d_____

Argued - October 8, 2009

PETER B. SKELOS, J.P.
ANITA R. FLORIO
RUTH C. BALKIN
JOHN M. LEVENTHAL, JJ.

2007-05097

DECISION & ORDER

The People, etc., respondent,
v Carlos Rodriguez, appellant.

(Ind. No. 3899/06)

Lynn W. L. Fahey, New York, N.Y. (Paul Skip Laisure of counsel), for appellant.

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

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Dowling, J.), rendered May 25, 2007, convicting him of criminal possession of a controlled substance in the second degree, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing, of that branch of the defendant's omnibus motion which was to suppress physical evidence.

ORDERED that the judgment is affirmed.

The hearing court properly denied that branch of the defendant's omnibus motion which was to suppress physical evidence (*see People v Blasich*, 73 NY2d 673, 678; *People v Martin*, 28 AD3d 583, 584; *People v Parris*, 26 AD3d 393, 394). Further, the trial court correctly determined that a statement made by the defendant's brother before his death was not admissible as a dying declaration (*see People v Nieves*, 67 NY2d 125, 132; *People v Becker*, 215 NY 126, 145; *People v Acomb*, 87 AD2d 1, 10).

The defendant failed to preserve for appellate review his contention that certain comments made by the prosecutor during summation deprived him of a fair trial because he failed to

November 4, 2009

Page 1.

PEOPLE v RODRIGUEZ, CARLOS

object to the subject remarks (*see* CPL 470.05[2]; *People v Lanier*, 53 AD3d 588, 589). In any event, the challenged remarks were fair comment on the evidence and responsive to defense counsel's summation (*see People v Rudd*, 62 AD3d 729, *lv denied* 12 NY3d 929; *People v Capehart*, 61 AD3d 885, 887, *lv denied* 13 NY3d 742).

SKELOS, J.P., FLORIO, BALKIN 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