

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

D25193
W/kmg

_____AD3d_____

Submitted - October 27, 2009

MARK C. DILLON, J.P.
ANITA R. FLORIO
RUTH C. BALKIN
JOHN M. LEVENTHAL, JJ.

2007-03579

DECISION & ORDER

The People, etc., respondent,
v Aror Ark O'Diah, appellant.

(Ind. No. 1806/06)

Lynn W. L. Fahey, New York, N.Y. (Denise A. Corsí of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Johnnette Traill, and Josette Simmons-McGhee of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Cooperman, J.), rendered March 19, 2007, convicting him of assault in the second degree, resisting arrest, aggravated unlicensed motor vehicle operation in the third degree, unlawful operation of a vehicle on a public highway, and stopping, standing, or parking outside of a business or residential district, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the prosecutor's comments during summation require reversal is unpreserved for appellate review, since he failed to seek a curative instruction or move for a mistrial with respect to the one challenged comment to which he objected, and he failed to object to the other challenged comments (*see* CPL 470.05[2]; *People v Romero*, 7 NY3d 911, 912; *People v Gregory*, 55 AD3d 752; *People v Morris*, 2 AD3d 652). In any event, the prosecutor's remarks were either fair comment on the evidence, responsive to the defense counsel's summation, or not so egregious as to have deprived the defendant of a fair trial (*see People v Galloway*, 54 NY2d 396,

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399-400; *People v Nieves*, 2 AD3d 539, 540; *People v Holguin*, 284 AD2d 343, 343; *People v Cariola*, 276 AD2d 800).

The defendant's remaining contention is without merit.

DILLON, 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 style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court