

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

D25355
C/kmg

_____AD3d_____

Argued - November 17, 2009

REINALDO E. RIVERA, J.P.
MARK C. DILLON
HOWARD MILLER
SHERI S. ROMAN, JJ.

2008-05433

DECISION & ORDER

The People, etc., respondent,
v Derrick Perry, appellant.

(Ind. No. 10306/07)

Lynn W. L. Fahey, New York, N.Y. (Jonathan K. Youngwood and Elizabeth J. Owen of counsel), for appellant.

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

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Kron, J.), rendered May 20, 2008, convicting him of criminal sale of a controlled substance in the third degree and criminal possession of a controlled substance in the seventh degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's claims of alleged improprieties in the prosecutor's summation are unpreserved for appellate review, as the defendant failed to raise any objections to the remarks he now contends were improper (*see* CPL 470.05[2]; *People v Gray*, 86 NY2d 10, 19; *People v Thompson*, 62 AD3d 817, 818). In any event, the remarks at issue were either fair comment on the evidence (*see People v Ashwal*, 39 NY2d 105, 109-110; *People v Scrimo*, _____AD3d_____, 2009 NY Slip Op 08247 [2d Dept 2009]; *People v Rodriguez*, _____AD3d_____, 2009 NY

December 15, 2009

Page 1.

PEOPLE v PERRY, DERRICK

Slip Op 08044 [2d Dept 2009]), or constituted harmless error (*see People v Crimmins*, 36 NY2d 230, 241-242; *People v Thompson*, 62 AD3d at 818).

RIVERA, J.P., DILLON, MILLER and ROMAN, 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