

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

D25653  
O/kmg

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

Submitted - December 11, 2009

PETER B. SKELOS, J.P.  
THOMAS A. DICKERSON  
PLUMMER E. LOTT  
SHERI S. ROMAN, JJ.

---

2007-11329

DECISION & ORDER

The People, etc., respondent,  
v Everett Brewster, appellant.

(Ind. No. 1158/05)

---

Lynn W. L. Fahey, New York, N.Y. (Jonathan Garvin of counsel), for appellant.

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

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Aloise, J.), rendered November 7, 2007, convicting him of robbery in the first degree (two counts), robbery in the second degree (three counts), criminal possession of a weapon in the second degree, criminal possession of a weapon in the third degree, criminal possession of stolen property in the third degree, and criminal possession of stolen property in the fifth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the prosecutor's summation deprived him of due process and a fair trial is unpreserved for appellate review, as the defendant either failed to make objections to remarks he now contests, made only general objections, failed to request curative instructions, or did not timely move for a mistrial (*see* CPL 470.05[2]; *People v Romero*, 7 NY3d 911; *People v Small*, 45 AD3d 705; *People v McHarris*, 297 AD2d 824, 825). In any event, most of the challenged remarks constituted fair comment on the evidence or were responsive to defense counsel's summation (*see People v Nisvis*, 56 AD3d 574; *People v McHarris*, 297 AD2d at 825; *People v Russo*, 201 AD2d 512, *affd* 85 NY2d 872). To the extent that some of the challenged

remarks were improper, any error resulting from those remarks was harmless (*see People v Crimmins*, 36 NY2d 230; *People v Martin*, 54 AD3d 776, 777).

Contrary to the defendant's contention, his arrest photograph was properly admitted into evidence as it was relevant under the circumstances and did not prejudice him (*see People v Logan*, 25 NY2d 184, 195-196, *cert denied* 396 US 1020; *People v Abdul*, 247 AD2d 276).

SKELOS, J.P., DICKERSON, LOTT 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