

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

D26191
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_____AD3d_____

Argued - January 22, 2010

FRED T. SANTUCCI, J.P.
THOMAS A. DICKERSON
CHERYL E. CHAMBERS
SANDRA L. SGROI, JJ.

2006-10513

DECISION & ORDER

The People, etc., respondent,
v Shomari Fortune, appellant.

(Ind. No. 297/05)

Lynn W. L. Fahey, New York, N.Y. (Simpson Thacher & Bartlett, LLP [Jonathan K. Youngwood and Chad H. Atlas], of counsel), for appellant.

Daniel M. Donovan, Jr., District Attorney, Staten Island, N.Y. (Morrie I. Kleinbart and Anne Grady of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Richmond County (Rooney, J.), rendered October 27, 2006, convicting him of criminal possession of a weapon in the third degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The Supreme Court providently exercised its discretion in precluding the defendant from calling a witness at trial to present certain evidence since the only purpose of the evidence would have been to impeach the credibility of the arresting police officers on a collateral matter (*see People v Alvino*, 71 NY2d 233, 247-248; *People v Fowler*, 61 AD3d 698, 698; *People v Rendon*, 301 AD2d 665; *People v Ragland*, 240 AD2d 598).

Contrary to the defendant's contention, the prosecutor's comments during summation did not deprive him of a fair trial, as they were a fair response to the defendant's attack on the credibility of the police witnesses (*see People v Galloway*, 54 NY2d 396; *People v Avila*, _____

February 16, 2010

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AD3d _____, 2010 NY Slip Op 00162 [2d Dept 2010]; *People v Robinson*, 63 AD3d 531, 532; *People v Barnes*, 33 AD3d 811; *People v Vaughn*, 209 AD2d 459).

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

SANTUCCI, J.P., DICKERSON, CHAMBERS and SGROI, 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