

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

D26354
H/prt

_____AD3d_____

Submitted - January 29, 2010

WILLIAM F. MASTRO, J.P.
DANIEL D. ANGIOLILLO
RUTH C. BALKIN
SANDRA L. SGROI, JJ.

2008-05904

DECISION & ORDER

The People, etc., respondent,
v David Walser, appellant.

(Ind. No. 3842/07)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Solomon Neubort, and Bruce Alderman of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Konviser, J.), rendered June 20, 2008, convicting him of attempted murder in the second degree, assault in the first degree, and criminal possession of a weapon in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's claim that some of the prosecutor's comments during summation were improper and deprived him of a fair trial is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Valdes*, 66 AD3d 925; *People v Lino*, 65 AD3d 1263; *People v Rodari*, 2 AD3d 756). In any event, to the extent that any of the challenged comments were improper, they were not so egregious as to deprive the defendant of a fair trial (*see People v Valerio*, _____AD3d _____, 2010 NY Slip Op 01003 [2d Dept 2010]; *People v Franklin*, 64 AD3d 614).

March 2, 2010

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The defendant's remaining contention is without merit.

MASTRO, J.P., ANGIOLILLO, BALKIN and SGROI, 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