

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

D26386
Y/hu

_____AD3d_____

Argued - January 29, 2010

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

2004-00422

DECISION & ORDER

The People, etc., respondent,
v Hardy Marston, appellant.

(Ind. No. 5526/02)

Pedro Antonio Garcia, New York, N.Y., for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Anne C. Feigus, and Melissa J. Feldman of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (J. Goldberg, J.), rendered December 15, 2003, convicting him of gang assault in the second degree and criminal possession of a weapon in the fourth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that he was deprived of a fair trial by the trial court's alleged denigration of defense counsel is without merit. Although the trial court criticized, in front of the jury, defense counsel's conduct, and made some comments that were less than favorable, the court's actions were provoked by defense counsel's misconduct (*see People v Gonzalez*, 38 NY2d 208, 210-211; *People v Martin*, 33 AD3d 1024, 1024-1025; *People v Man Xing Guo*, 271 AD2d 700). Moreover, any potential prejudice to the defendant was minimized by the trial court's instructions to the jury that the court had no opinion about the evidence, and that nothing it said during the trial was intended to convey such an impression (*see People v Martin*, 33 AD3d at 1025; *People v Man Xing Guo*, 271 AD2d at 700; *People v Riddick*, 251 AD2d 517, 518-519).

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

The defendant's remaining contentions are 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 style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court