

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

D26397
O/prt

_____AD3d_____

Submitted - February 2, 2010

PETER B. SKELOS, J.P.
ANITA R. FLORIO
L. PRISCILLA HALL
LEONARD B. AUSTIN, JJ.

2008-04479

DECISION & ORDER

The People, etc., respondent,
v John Monteleone, appellant.

(Ind. No. 2686/04)

Steven Banks, New York, N.Y. (Jonathan Garelick of counsel), for appellant.

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

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Knopf, J.), rendered May 5, 2008, convicting him of 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 as a result of the prosecutor's misconduct on summation is without merit. Most of the challenged remarks were proper because they constituted either fair comment upon the evidence or a fair response to the defense summation (*see People v Ashwal*, 39 NY2d 105, 109-110; *People v Nieves*, 2 AD3d 539; *People v Ivory*, 307 AD2d 1000, 1001). With respect to the remaining challenged remarks, the trial court's instructions served to ameliorate any prejudicial effect that may have resulted (*see People v Barnes*, 80 NY2d 867; *People v Galloway*, 54 NY2d 396; *People v Martinez*, 58 AD3d 754, 756; *People v Ivory*, 307 AD2d at 1001; *People v Harris*, 84 AD2d 63, 104). Moreover, any error resulting from the challenged remarks, both individually and cumulatively, was harmless (*see People v Crimmins*,

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36 NY2d 230, 241; *People v White*, 5 AD3d 511, 512; *People v Ivory*, 307 AD2d at 1001; *see also People v Hollenquest*, 48 AD3d 593, 593).

SKELOS, J.P., FLORIO, HALL and AUSTIN, 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