

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

D27386
W/kmg

_____AD3d_____

Submitted - April 16, 2010

WILLIAM F. MASTRO, J.P.
JOSEPH COVELLO
RANDALL T. ENG
ARIEL E. BELEN, JJ.

2006-11746

DECISION & ORDER

The People, etc., respondent,
v Henry Phem, appellant.

(Ind. No. 6701/06)

Lynn W. L. Fahey, New York, N.Y. (Alexis A. Ascher of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Jodi L. Mandel of counsel; Rose L. Amandola on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Guzman, J.), rendered December 5, 2006, convicting him of criminal sale of a controlled substance in the third degree, criminal possession of a controlled substance in the third degree, and unlawful possession of marijuana, upon a jury verdict, and imposing sentence.

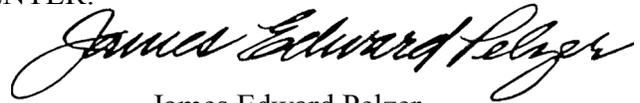
ORDERED that the judgment is affirmed.

Although there was no relevant purpose in admitting the defendant's arrest photographs into evidence (*see People v Poblner*, 32 NY2d 356, *cert denied* 416 US 905; *People v. Martin*, 54 AD3d 776; *People v Diaz*, 277 AD2d 325; *People v Rivera*, 192 AD2d 561, 562; *cf. People v Logan*, 25 NY2d 184, 195-196, *cert denied* 396 US 1020), under the circumstances of this case, the error was harmless, as there was overwhelming evidence of the defendant's guilt, and no significant probability that the defendant would have been acquitted if not for the error in admitting

the photographs (*see People v Crimmins*, 36 NY2d 230, 241-242; *People v Rivera*, 192 AD2d at 596; *People v Gerbino*, 132 AD2d 566).

MASTRO, J.P., COVELLO, ENG and BELEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial 'J'.

James Edward Pelzer
Clerk of the Court