

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

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Submitted - May 6, 2010

PETER B. SKELOS, J.P.
JOSEPH COVELLO
L. PRISCILLA HALL
SANDRA L. SGROI, JJ.

2007-07969

DECISION & ORDER

The People, etc., respondent,
v George K. Jacob, appellant.

(Ind. No. 1510/06)

Raiser & Kenniff, P.C., Mineola, N.Y. (Thomas A. Kenniff of counsel), for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Robert A. Schwartz and Donald Berk of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Nassau County (Peck, J.), rendered July 17, 2007, convicting him of attempted assault in the second degree and arson in the fourth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant correctly contends that the County Court's *Sandoval* ruling (*see People v Sandoval*, 34 NY2d 371) improperly allowed the prosecutor to elicit underlying facts of the defendant's prior conviction involving the same complainant and similar acts (*cf. People v Mack*, 6 AD3d 551; *People v Ricks*, 135 AD2d 844). However, the evidence of the defendant's guilt was overwhelming and there was no significant probability that the error contributed to defendant's conviction (*see People v Jackson*, 8 NY3d 869, 871; *People v Crimmins*, 36 NY2d 230).

The defendant's contention that the prosecutor's remarks during summation deprived him of a fair trial is unpreserved for appellate review since he failed to object to those specific remarks at trial (*see People v Anderson*, 24 AD3d 460; *People v Williams*, 303 AD2d 772; *People v Hughes*, 280 AD2d 694). In any event, the prosecutor's remarks constituted fair comment on the evidence

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and fair response to defense counsel's summation (*see People v Garcia*, 66 AD3d 699). Thus, the remarks did not deprive the defendant of a fair trial (*see People v Thornton*, 4 AD3d 561, 562).

SKELOS, J.P., COVELLO, HALL 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