

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

D28094
H/hu

_____AD3d_____

Submitted - June 17, 2010

A. GAIL PRUDENTI, P.J.
REINALDO E. RIVERA
FRED T. SANTUCCI
HOWARD MILLER, JJ.

2007-06042

DECISION & ORDER

The People, etc., respondent,
v Glendon Brown, appellant.

(Ind. No. 9131/05)

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

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

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Mullen, J.), rendered June 26, 2007, convicting him of rape in the second degree (two counts), sexual abuse in the third degree (two counts), and endangering the welfare of a child, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the trial court did not improvidently exercise its discretion in denying his motion for a mistrial. The decision to declare a mistrial rests within the sound discretion of the trial court, which is in the best position to determine if this drastic remedy is necessary to protect the defendant's right to a fair trial (*see Matter of Plummer v Rothwax*, 63 NY2d 243, 250; *People v Way*, 69 AD3d 964, 965; *People v Hernandez*, 11 AD3d 479; *People v Knorr*, 284 AD2d 411, 412). Here, while the challenged testimony was improper (*see generally People v Arafet*, 13 NY3d 460, 464-465; *People v Vargas*, 88 NY2d 856, 858; *People v Molineux*, 168 NY 264), any prejudice resulting therefrom was alleviated by the trial court's actions in immediately striking the testimony from the record and providing a curative instruction to the jury (*see People v*

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Way, 69 AD3d at 965; *People v Benloss*, 60 AD3d 686, 687; *People v Lockhart*, 220 AD2d 690, 691).

PRUDENTI, P.J., RIVERA, SANTUCCI and MILLER, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court