

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

D28120
C/prt

_____AD3d_____

Argued - June 18, 2010

JOSEPH COVELLO, J.P.
HOWARD MILLER
DANIEL D. ANGIOLILLO
JOHN M. LEVENTHAL, JJ.

2007-11776

DECISION & ORDER

The People, etc., respondent,
v Ramon Pineda, appellant.

(Ind. No. 976/06)

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

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (Gary Fidel and Jill Gross-Marks of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Gavrin J.), rendered December 7, 2007, convicting him of robbery in the second degree, criminal possession of stolen property in the fifth degree, assault in the third degree, reckless endangerment in the first degree, and criminal mischief in the fourth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

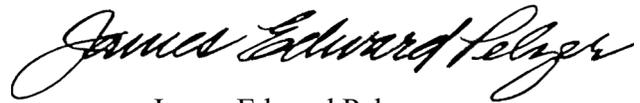
Contrary to the defendant's contention, the trial court did not improperly limit cross-examination of the arresting police officer, and did not deprive the defendant of his fundamental right to present a defense (*see People v Graddick*, 7 AD3d 811; *People v Sawyer*, 304 AD2d 775, 776). The defendant fully presented his theory that the incident was nothing more than a fight between two groups of men.

The defendant's contention that he was deprived of a fair trial by specific instances of the prosecutor's conduct during the trial is without merit (*see People v Thomas*, 34 AD3d 606). Further, the defendant's contention that various comments made by the prosecutor during summation

were improper and deprived him of a fair trial is without merit. The challenged remarks either were within the bounds of permissible rhetorical comment, fair response to arguments and issues raised by the defense, fair comment on the evidence, or cured by the trial court's charge to the jury (*see People v Ashwal*, 39 NY2d 105, 109; *People v Ayala*, 69 AD3d 869, 870, *lv denied* 14 NY3d 885; *People v Pocesta*, 71 AD3d 920).

COVELLO, J.P., MILLER, ANGIOLILLO and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court