

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

D28371  
G/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - May 20, 2010

A. GAIL PRUDENTI, P.J.  
PETER B. SKELOS  
ANITA R. FLORIO  
SANDRA L. SGROI, JJ.

2008-07711  
2008-09257

DECISION & ORDER

The People, etc., respondent,  
v Linda Pickney, appellant.

(Ind. Nos. 2462/07, 10240/08)

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Steven Banks, New York, N.Y. (Adrienne Hale and Lawrence T. Hausman of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Jeanette Lifschitz, and Jaclyn Belson of counsel), for respondent.

Appeal by the defendant from (1) a judgment of the Supreme Court, Queens County (Aloise, J.), rendered August 6, 2008, convicting her of criminal possession of stolen property in the fifth degree and petit larceny under Indictment No. 2462/07, upon a jury verdict, and imposing sentence, and (2) a judgment of the same court (McGann, J.), also rendered August 6, 2008, convicting her of criminal sale of a controlled substance in the fifth degree under Indictment No. 10240/08, upon her plea of guilty, and imposing sentence.

ORDERED that the judgments are affirmed.

Contrary to the defendant's contention, certain comments made by the prosecutor during summation at the trial under Indictment No. 2462/07 either were within the bounds of permissible rhetorical comment (*see People v Philips*, 30 AD3d 618, 619), were fair comment on the evidence (*see People v McHarris*, 297 AD2d 824, 825), were fair response to defense counsel's summation (*see People v Evanson*, 71 AD3d 782, 783; *People v Jones*, 294 AD2d 517, 517; *People*

*v Scotti*, 220 AD2d 543), or constituted harmless error (*see People v Crimmins*, 36 NY2d 230, 242; *People v Ortiz*, 46 AD3d 580, 581; *People v Adamo*, 309 AD2d 808, 809).

The defendant's contention raised in her supplemental brief regarding the judgment rendered under Indictment No. 10240/08 has been rendered academic in light of our determination (*see People v Rowland*, 8 NY3d 342, 345; *People v Fuggazato*, 62 NY2d 862, 863).

PRUDENTI, P.J., SKELOS, FLORIO and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan  
Clerk of the Court