

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

D29136
H/kmb

_____AD3d_____

Submitted - November 5, 2010

WILLIAM F. MASTRO, J.P.
JOSEPH COVELLO
DANIEL D. ANGIOLILLO
PLUMMER E. LOTT, JJ.

2006-09758

DECISION & ORDER

The People, etc., respondent,
v Wendell Evans, appellant.

(Ind. No. 10118/06)

Lynn W. L. Fahey, New York, N.Y. (Joshua M. Levine of counsel), for appellant.

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

Appeal by the defendant from a judgment of the Supreme Court, Queens County (McGann, J.), rendered September 28, 2006, convicting him of criminal possession of a controlled substance in the third degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's claims regarding the prosecutor's comments during summation are unpreserved for appellate review. In the one instance when the defendant did object, he made only a general objection and failed to request any further curative action when the trial court instructed the jury members to draw their own inferences from the evidence (*see* CPL 470.05[2]; *People v Heide*, 84 NY2d 943, 944; *People v Haripersaud*, 24 AD3d 468; *People v Smith*, 298 AD2d 607).

In any event, the defendant's contentions are without merit. Since the prosecutor did not state her personal belief regarding the truthfulness of the People's witnesses, it cannot be said that she improperly vouched for their credibility (*see People v Bailey*, 58 NY2d 272; *People v Evans*, 291

November 23, 2010

Page 1.

PEOPLE v EVANS, WENDELL

AD2d 569). Further, while some of the contested summation remarks were improper, they were not sufficiently prejudicial to require reversal (*see People v Thomas*, 8 AD3d 506).

MASTRO, J.P., COVELLO, ANGIOLILLO and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court