

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

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W/lu

_____AD3d_____

Submitted - December 15, 2008

DANIEL D. ANGIOLILLO, J.P.
JOHN M. LEVENTHAL
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2007-03156

DECISION & ORDER

The People, etc., respondent,
v Vincent Rosa, appellant.

(Ind. No. 2494/03)

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

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,
Nicoletta J. Caferra, and Jennifer Hagan of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Eng, J.), rendered March 21, 2007, convicting him of murder in the second degree and criminal possession of a weapon in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's challenge to the legal sufficiency of the evidence is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Hawkins*, _____NY3d_____, 2008 NY Slip Op 09254, *5-6). In any event, viewing the evidence in the light most favorable to the prosecution, and drawing all reasonable inferences in the prosecution's favor (*see People v Contes*, 60 NY2d 620, 621), we find that it was legally sufficient to establish the defendant's guilt beyond a reasonable doubt.

Upon our independent review pursuant to CPL 470.15(5), we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

January 13, 2009

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The defendant's challenges to remarks made by the prosecutor during summation are unpreserved for appellate review since the defendant failed to object or raised only general objections to the remarks, did not request curative instructions when his objections were sustained, and failed to move timely for a mistrial (*see* CPL 470.05[2]; *People v Almonte*, 23 AD3d 392, 394). In any event, the challenged remarks were either responsive to the arguments and issues raised by the defense or fair comment on the evidence (*see People v Montalvo*, 34 AD3d 600, 601).

The defendant's contention that he was denied effective assistance of counsel is without merit (*see People v Turner*, 5 NY3d 476).

ANGIOLILLO, J.P., LEVENTHAL, BELEN and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court