

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

D22623  
W/kmg

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Submitted - February 26, 2009

PETER B. SKELOS, J.P.  
STEVEN W. FISHER  
ANITA R. FLORIO  
JOHN M. LEVENTHAL, JJ.

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2006-07062

DECISION & ORDER

The People, etc., respondent,  
v Douglas Stiff, appellant.

(Ind. No. 1826/04)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Ruth E. Ross, and Judith Aarons of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Lott, J.), rendered July 7, 2006, convicting him of reckless endangerment in the first degree (three counts), upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that various remarks made by the prosecutor during his opening statement and on summation were improper, and denied him a fair trial. This contention, however, is unpreserved for appellate review since the defendant either failed to object or raised only general objections to the remarks, did not request curative instructions when his objections were sustained, and failed to timely move for a mistrial (*see* CPL 470.05[2]; *People v Almonte*, 23 AD3d 392, 394). In any event, the challenged remarks were either permissible rhetorical comment (*see People v Galloway*, 54 NY2d 396), a fair response to the arguments and issues raised by the defense (*see People v Halm*, 81 NY2d 819; *People v McHarris*, 297 AD2d 824), fair comment on the evidence (*see People v Ashwal*, 39 NY2d 105), or harmless error (*see People v Crimmins*, 36 NY2d 230; *People v Maldonado*, 55 AD3d 626, *lv denied* 11 NY3d 927; *People v Brown*, 272 AD2d 338).

March 31, 2009

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Furthermore, under the circumstances of this case, defense counsel's failure to object to the challenged remarks did not constitute ineffective assistance of counsel (*see People v Tonge*, 93 NY2d 838; *People v Benevento*, 91 NY2d 708; *People v Robbins*, 48 AD3d 711).

The defendant's remaining contention is unpreserved for appellate review and, in any event, is without merit.

SKELOS, J.P., FISHER, FLORIO and LEVENTHAL, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court