

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

D24064  
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Submitted - May 15, 2009

WILLIAM F. MASTRO, J.P.  
ANITA R. FLORIO  
RANDALL T. ENG  
JOHN M. LEVENTHAL, JJ.

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2006-09070

DECISION & ORDER

The People, etc., respondent,  
v Jean Theard, appellant.

(Ind. No. 1941/05)

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Steven Banks, New York, N.Y. (Allen Fallek of counsel), for appellant, and appellant pro se.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Nicoletta J. Caferri, and Merri Turk Lasky of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Buchter, J.), rendered September 5, 2006, convicting him of rape in the first degree (two counts), criminal sexual act in the first degree, burglary in the first degree, robbery in the second degree, possession of burglar's tools (two counts), and attempted burglary in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that he was deprived of a fair trial by certain remarks made by the prosecutor during summation is not preserved for appellate review because the defendant either failed to make specific and timely objections, or failed to seek curative instructions or move for a mistrial (*see* CPL 470.05[2]; *People v Almonte*, 23 AD3d 392; *People v Morris*, 2 AD3d 652, 653). In any event, the challenged remarks were either fair comment on the evidence (*see generally* *People v Ashwal*, 39 NY2d 105, 109), responsive to arguments presented in the defense counsel's summation (*see* *People v Jones*, 294 AD2d 517; *People v Russo*, 201 AD2d 512, 513, *affd* 85 NY2d 872), or harmless (*see* *People v Crimmins*, 36 NY2d 230, 239).

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The defendant's challenge to the legal sufficiency of the evidence is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Gray*, 86 NY2d 10, 19). In any event, viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620), 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).

The defendant's remaining contentions, raised in his supplemental pro se brief, are unpreserved and, in any event, are without merit.

MASTRO, J.P., FLORIO, ENG and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court