

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

D25651  
G/hu

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

Submitted - December 8, 2009

MARK C. DILLON, J.P.  
ANITA R. FLORIO  
L. PRISCILLA HALL  
SANDRA L. SGROI, JJ.

---

2007-06176

DECISION & ORDER

The People, etc., respondent,  
v Santiago Lugo, appellant.

(Ind. No. 3028/05)

---

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

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

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Latella, J.), rendered June 18, 2007, convicting him of rape in the first degree and sexual abuse in the first degree (four counts), upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that the Supreme Court erroneously failed to require the People to provide race-neutral explanations for their peremptory challenges to certain jurors during earlier rounds of voir dire, after the court ruled in the fourth round that a prima facie case of discrimination was established (*see Batson v Kentucky*, 476 US 79). However, this contention is unpreserved for appellate review, as defense counsel never requested explanations for the challenges exercised during the first and third rounds after the court found, during the fourth round, that the prima facie case was established (*see CPL 470.05[2]*; *People v James*, 99 NY2d 264, 271-272; *People v Patterson*, 40 AD3d 659; *People v Figueroa*, 276 AD2d 561; *People v Hernandez*, 266 AD2d 311; *People v Caston*, 239 AD2d 355; *People v Font*, 223 AD2d 600).

Contrary to the defendant's contention, he was not denied the effective assistance of counsel (see *People v Stultz*, 2 NY3d 277; *People v Baldi*, 54 NY2d 137, 147; cf. *People v Turner*, 5 NY3d 476, 480).

DILLON, J.P., FLORIO, HALL and SGROI, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court