

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

D25862  
O/kmg

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

Argued - December 21, 2009

PETER B. SKELOS, J.P.  
RUTH C. BALKIN  
JOHN M. LEVENTHAL  
PLUMMER E. LOTT, JJ.

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2006-11773

DECISION & ORDER

The People, etc., respondent,  
v Hugo Martinez, appellant.

(Ind. No. 2813/05)

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Beverly Van Ness, New York, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Andrea M. DiGregorio of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Nassau County (Robbins, J.), rendered November 27, 2006, convicting him of murder in the second degree, criminal possession of a controlled substance in the fifth degree, and manslaughter in the first degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The County Court did not improvidently exercise its discretion in denying the defendant's motion pursuant to CPL 200.20(3) to sever the charges under the first and third counts of the indictment, which arose from separate incidents on separate dates. Contrary to the defendant's contention, he failed to demonstrate that there was substantially more proof of one incident, as compared to the other, and that there was a substantial likelihood that the jury would be unable to consider separately the proof as it related to each incident (*see* CPL 200.20[3][a]; *People v Cox*, 298 AD2d 461). Further, there is nothing in the record indicating that the jury was unable to separately consider the discrete charges (*see People v Smith*, 64 AD3d 619, 620; *People v Montalvo*, 34 AD3d 600, 601; *People v Berta*, 213 AD2d 659, 660).

The defendant's contention that certain remarks made by the prosecutor during summation deprived him of a fair trial is unpreserved for appellate review, as he failed to object to the subject remarks (*see* CPL 470.05[2]; *People v Charles*, 57 AD3d 556). In any event, "[t]o the extent that the prosecutor may have exceeded the bounds of permissible rhetorical comment, any error was harmless" (*People v Carter*, 36 AD3d 624, 624; *see People v Crimmins*, 36 NY2d 230, 242).

The defendant was not deprived of the effective assistance of counsel, as the record reveals that defense counsel provided meaningful representation (*see People v Benevento*, 91 NY2d 708; *People v Baldi*, 54 NY2d 137).

SKELOS, J.P., BALKIN, LEVENTHAL and LOTT, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer  
Clerk of the Court