

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

D25891  
O/prt

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

Submitted - December 22, 2009

FRED T. SANTUCCI, J.P.  
THOMAS A. DICKERSON  
RANDALL T. ENG  
CHERYL E. CHAMBERS, JJ.

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2008-05907

DECISION & ORDER

The People, etc., respondent,  
v Antonio Lopez, appellant.

(Ind. No. 8399/07)

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Lynn W. L. Fahey, New York, N.Y. (Steven R. Bernhard of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Shulamit Rosenblum Nemec, and Bruce Alderman of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Mullen, J.), rendered June 3, 2008, convicting him of rape in the first degree, criminal sexual act in the first degree, and assault in the third degree (two counts), upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that various comments made by the prosecutor during her summation were improper and deprived him of a fair trial is unpreserved for appellate review, as the defendant either did not object to the remarks at issue or made only general objections, or his objections were sustained without any further request for curative instructions and he failed to move for a mistrial (*see People v Philbert*, 60 AD3d 698; *People v Dashosh*, 59 AD3d 731; *People v Boyce*, 54 AD3d 1052). In any event, the challenged remarks constituted fair comment on the evidence or were responsive to defense counsel's summation (*see People v Forest*, 52 AD3d 733; *People v Holguin*, 284 AD2d 343), were fair rhetorical comment (*see People v Galloway*, 54 NY2d 396, 399; *People v Ashwal*, 39 NY2d 105, 109; *People v Alvarado*, 262 AD2d 651, 652), or constituted harmless error (*see People v LaValle*, 3 NY3d 88, 115-116; *People v Crimmins*, 36

NY2d 230). Contrary to the defendant's contention, the prosecutor's comments regarding the entitlements of the victims here to the protections of the law did not constitute a "safe streets" argument (*see People v Chandler*, 265 AD2d 239; *People v Durecot*, 224 AD2d 264). Furthermore, defense counsel's failure to object to the challenged remarks did not constitute ineffective assistance of counsel (*see People v Taylor*, 1 NY3d 174; *People v Benevento*, 91 NY2d 708; *People v Gonzalez*, 44 AD3d 790).

SANTUCCI, J.P., DICKERSON, ENG and CHAMBERS, 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