

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

D28511
Y/ct

_____AD3d_____

Argued - September 17, 2010

FRED T. SANTUCCI, J.P.
RUTH C. BALKIN
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2008-03954

DECISION & ORDER

The People, etc., respondent,
v David Moore, appellant.

(Ind. No. 2894/06)

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

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

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Buchter, J.), rendered April 23, 2008, convicting him of attempted murder in the second degree, assault in the first degree, and criminal possession of a weapon in the fourth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that various remarks made by the prosecutor during summation were improper and deprived him of a fair trial. This contention, however, is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Almonte*, 23 AD3d 392, 394). In any event, the challenged remarks were 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; *People v Brown*, 272 AD2d 338).

Furthermore, under the circumstances of this case, defense counsel's failure to object

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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 sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80, 83).

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

SANTUCCI, J.P., BALKIN, BELEN and CHAMBERS, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court