

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

D30199
O/kmb

_____AD3d_____

Argued - February 4, 2011

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
RANDALL T. ENG
SANDRA L. SGROI, JJ.

2009-04688

DECISION & ORDER

The People, etc., respondent,
v Brett Archer, appellant.

(Ind. No. 2259/07)

Lynn W. L. Fahey, New York, N.Y. (Paul Skip Laisure of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Anthea H. Bruffee, and Jennifer Rada of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Dowling, J.), rendered April 29, 2009, convicting him of assault in the first degree and criminal possession of a weapon in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that improper remarks made by the prosecutor in summation deprived him of a fair trial is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Bey*, 71 AD3d 1156). In any event, the challenged remarks were proper because they constituted fair comment upon the evidence or fair response to the defense summation, or otherwise remained within the "broad bounds of rhetorical comment permissible in closing argument" (*People v Galloway*, 54 NY2d 396, 399; *see People v Cass*, 79 AD3d 768; *People v Perez*, 77 AD3d 974; *People v Bey*, 71 AD3d 1156; *People v Dorgan*, 42 AD3d 505).

The failure of the defendant's attorney to object to the prosecutor's summation did not constitute ineffective assistance of counsel because counsel need not make an argument that has

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little or no chance of success (*see People v Stultz*, 2 NY3d 277, 287; *People v James*, 72 AD3d 844). The defendant was afforded meaningful representation (*see People v Benevento*, 91 NY2d 708; *People v Baldi*, 54 NY2d 137).

MASTRO, J.P., SKELOS, ENG and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court