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

D30650
W/kmb

_____AD3d_____ Submitted - March 4, 2011

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
RUTH C. BALKIN
SHERI S. ROMAN, JJ.

2009-03838 DECISION & ORDER

The People, etc., respondent, v Shan Paul,
also known as Owen Damien Smith, appellant.

(Ind. No. 4088/06)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Jodi L. Mandel, and Melissa J. Feldman of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Chun, J.), rendered March 25, 2009, convicting him of criminal sexual act in the first degree and sexual misconduct, upon a jury verdict, and rape in the first degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contentions that various comments made by the prosecutor during her summation were improper and deprived him of a fair trial are unpreserved for appellate review, as the defendant 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 his motion for a mistrial after the completion of summations was untimely and failed to preserve his contention (*see* CPL 470.05[2]; *People v Balls*, 69 NY2d 641, 642; *People v Salnave*, 41 AD3d 872, 874). In any event, the challenged remarks did not exceed the bounds of rhetorical comment permissible in closing argument and constituted either fair comment upon the evidence presented or fair response to the

defense summation (*see People v Galloway*, 54 NY2d 396, 399; *People v McHarris*, 297 AD2d 824, 825).

MASTRO, J.P., SKELOS, BALKIN and ROMAN, JJ., concur.

ENTER:

Matthew G. Kiernan
Clerk of the Court