

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

D30962
W/kmb

_____AD3d_____

Argued - March 17, 2011

A. GAIL PRUDENTI, P.J.
MARK C. DILLON
RUTH C. BALKIN
SANDRA L. SGROI, JJ.

2009-06165

DECISION & ORDER

The People, etc., respondent,
v Carlos Gonzalez, appellant.

(Ind. No. 1572/07)

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

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Ellen C. Abbot, and Brooke E. Barnes of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Holder, J.), rendered May 26, 2009, convicting him of robbery in the first degree, robbery in the second degree, criminal possession of a weapon in the fourth degree, and criminal possession of stolen property in the fifth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that he was deprived of a fair trial by certain purportedly inflammatory remarks made by the prosecutor in the opening statement is unpreserved for appellate review, as the defendant failed to object to the challenged remarks (*see* CPL 470.05[2]). In any event, the "prosecutor's opening statement adequately described what the People intended to prove, and properly prepared the jury to resolve the factual issues at the trial" (*People v Helenese*, 75 AD3d 653, 655, quoting *People v Larios*, 25 AD3d 569, 570; *People v Umoja*, 70 AD3d 867, 868; *People v Garson*, 69 AD3d 650, 651).

The defendant also contends that he was deprived of a fair trial because of certain allegedly improper comments made by the prosecutor on summation. The defendant's contentions,

however, are not preserved for appellate review (*see* CPL 470.05[2]). In any event, although several of the prosecutor's comments would have been better left unsaid, they did not, singly or in combination, deprive the defendant of a fair trial (*see People v Valencia*, 80 AD3d 632; *People v Garcia-Villegas*, 78 AD3d 727; *People v Turner*, 34 AD3d 705; *People v Shelton*, 307 AD2d 370, *affd* 1 NY3d 614).

The defendant's remaining contention is without merit.

PRUDENTI, P.J., DILLON, BALKIN and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court