

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

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C/hu

_____AD3d_____

Submitted - November 16, 2012

WILLIAM F. MASTRO, J.P.
PLUMMER E. LOTT
SHERI S. ROMAN
JEFFREY A. COHEN, JJ.

2011-05162

DECISION & ORDER

The People, etc., respondent,
v Alexis Caba, appellant.

(Ind. No. 7084/08)

Edwin Ira Schulman, Kew Gardens, N.Y., for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Joyce Slevin,
and Melissa Causey of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Parker, J.), rendered May 17, 2011, convicting him of 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 claim that the People made an improper "safe streets" argument in summation is unpreserved for appellate review, as he did not object to the remarks at issue (*see* CPL 470.05[2]; *People v Parker-Davidson*, 89 AD3d 1114). In any event, contrary to the defendant's contention, the prosecutor did not assert an unduly prejudicial "safe streets" argument (*see People v Malave*, 7 AD3d 542, 543; *People v Tolliver*, 267 AD2d 1007, 1008). The remaining comments challenged by the defendant were fair response to arguments made by defense counsel, were fair comment on the evidence, or otherwise did not deprive the defendant of a fair trial (*see People v Hudson*, 54 AD3d 774, 775; *People v Olivo*, 23 AD3d 584). Even if any of these comments did in some way denigrate defense counsel, they were not so derogatory as to deprive the defendant of a fair trial (*see People v McDonald*, 79 AD3d 771, 772).

December 12, 2012

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Contrary to the defendant's contention, certain testimony given by a prosecution witness did not violate the trial court's in limine ruling. Even if the testimony did violate the ruling, the court providently exercised its discretion in denying the defendant's motion for a mistrial based on the testimony. The testimony was not prejudicial to the defendant, and the defendant rejected the court's offer to provide a curative instruction (*see People v Moret*, 290 AD2d 250, 251).

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

MASTRO, J.P., LOTT, ROMAN and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court