

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

D36737  
T/kmb

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - October 4, 2012

RANDALL T. ENG, P.J.  
MARK C. DILLON  
PLUMMER E. LOTT  
JEFFREY A. COHEN, JJ.

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2009-11713

DECISION & ORDER

The People, etc., respondent,  
v Frank Ryer, appellant.

(Ind. No. 12335/07)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Ruth E. Ross of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Goldberg, J.), rendered November 30, 2009, as amended December 1, 2009, convicting him of rape in the first degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment, as amended, is affirmed.

The defendant's contention that he was denied a fair trial by certain remarks and questions posed by the trial court to various witnesses is without merit. None of the court's questions or remarks prevented the jury from arriving at an impartial verdict based upon the evidence presented. The court kept the proceedings within the confines of the issues and encouraged clarity in the development of proof (*see People v Moulton*, 43 NY2d 944, 946; *People v DeJesus*, 42 NY2d 519, 523). Although certain of the court's comments during the course of the proceedings would have been better left unsaid, the defendant was not denied a fair trial by those remarks (*see People v Moulton*, 43 NY2d at 946; *People v Pittam*, 23 AD3d 412, 413; *People v Smalls*, 293 AD2d 500).

The defendant's arguments regarding alleged prosecutorial misconduct during summation are without merit. The challenged remarks either constituted fair comment on the

evidence, were responsive to defense counsel's summation (*see People v Halm*, 81 NY2d 819, 821; *People v Smith*, 94 AD3d 1023; *People v Lawton*, 81 AD3d 663, 664), or constituted harmless error (*see People v Kinard*, 96 AD3d 976; *People v Mullings*, 88 AD3d 745, 745-746; *People v Gadsden*, 82 AD3d 902, 903).

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

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

ENG, P.J., DILLON, LOTT and COHEN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court