

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

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_____AD3d_____

Argued - May 5, 2009

ANITA R. FLORIO, J.P.
HOWARD MILLER
JOSEPH COVELLO
LEONARD B. AUSTIN, JJ.

2007-05862

DECISION & ORDER

The People, etc., respondent,
v Marc Douglas, appellant.

(Ind. No. 06-00395)

Ronald L. Kuby, New York, N.Y. (Lea Spiess of counsel), for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (Lois Cullen Valerio, Richard Longworth Hecht, and Anthony J. Servino of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Westchester County (Zambelli, J.), rendered May 31, 2007, convicting him of burglary in the first degree (two counts), assault in the first degree, criminal possession of a weapon in the second degree, and criminal mischief in the fourth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that he was denied a fair trial by certain remarks made by the prosecutor during summation is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Tonge*, 93 NY2d 838, 839-840; *People v Dein*, 77 NY2d 885, 885-886; *People v Balls*, 69 NY2d 641, 642; *People v Arroyo*, 309 AD2d 870, 871). In any event, the challenged comments were either fair comment on the evidence or responsive to the defense counsel's summation (*see People v Halm*, 81 NY2d 819; *People v Maldonado*, 55 AD3d 626, 627-628).

In fulfilling our responsibility to conduct an independent review of the weight of the evidence (*see* CPL 470.15[5]; *People v Danielson*, 9 NY3d 342), we nevertheless accord great deference to the jury's opportunity to view the witnesses, hear the testimony, and observe demeanor

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(see *People v Mateo*, 2 NY3d 383, 410, *cert denied* 542 US 946; *People v Bleakley*, 69 NY2d 490, 495). Upon reviewing the record here, we are satisfied that the verdict of guilt was not against the weight of the evidence (see *People v Romero*, 7 NY3d 633).

FLORIO, J.P., MILLER, COVELLO and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court