

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

D13508  
C/hu

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Argued - December 12, 2006

REINALDO E. RIVERA, J.P.  
ROBERT A. SPOLZINO  
DAVID S. RITTER  
DANIEL D. ANGIOLILLO, JJ.

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2005-02626

DECISION & ORDER

The People, etc., respondent,  
v Russell Smith, appellant.

(Ind. No. 3611/04)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Jodi L. Mandel of counsel; Sabrina Thanse on the brief), for respondent.

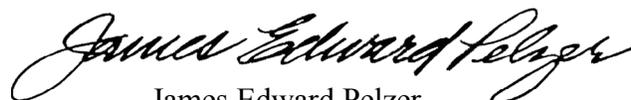
Appeal by the defendant from a judgment of the Supreme Court, Kings County (Carroll, J.), rendered February 14, 2005, convicting him of burglary in the third degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contentions that prosecutorial misconduct during summation constituted reversible error are without merit (*see People v Caban*, 5 NY3d 143). Most of the prosecutor's statements were fair comment on the evidence, or fair response to the defense counsel's arguments upon summation (*see People v Ashwal*, 39 NY2d 105; *People v Valdes*, 291 AD2d 513). Further, although some of the prosecutor's comments were improper, any error was harmless, because the evidence of the defendant's guilt was overwhelming, and there was no significant possibility that the defendant would have been acquitted absent the prosecutor's statements (*see People v Crimmins*, 36 NY2d 230; *People v Halm*, 81 NY2d 819; *People v Adamo*, 309 AD2d 808).

RIVERA, J.P., SPOLZINO, RITTER and ANGIOLILLO, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

January 23, 2007

PEOPLE v SMITH, RUSSELL