

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

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_____AD3d_____

Submitted - May 10, 2007

REINALDO E. RIVERA, J.P.
ROBERT A. SPOLZINO
ANITA R. FLORIO
DANIEL D. ANGIOLILLO, JJ.

2004-09076

DECISION & ORDER

The People, etc., respondent,
v Mark A. Brescia, appellant.

(Ind. No. 40/03)

Bruce A. Petito, Poughkeepsie, N.Y., for appellant, and appellant pro se.

William V. Grady, District Attorney, Poughkeepsie, N.Y. (Bridget Rahilly Steller of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Dutchess County (Hayes, J.), rendered November 19, 2003, convicting him of burglary in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620, 621), we find that it was legally sufficient to establish the defendant's guilt beyond a reasonable doubt. Resolution of issues of credibility is primarily a matter to be determined by the jury, which saw and heard the witnesses, and its determination should be accorded great deference on appeal (*see People v Romero*, 7 NY3d 633, 644-645). Upon the exercise of our factual review power (*see CPL 470.15[5]*), we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero, supra*).

Furthermore, the trial court providently exercised its discretion in denying the defendant's motion for a mistrial based upon the two brief references to his criminal record and prior incarceration made in the testimony adduced at trial (*see People v Ortiz*, 54 NY2d 288, 292). Any

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prejudice to the defendant that might have resulted from such testimony was alleviated by the trial court's prompt curative instructions to the jury (*see People v Santiago*, 52 NY2d 865, 866; *People v Smith*, 23 AD3d 415; *People v Torres*, 302 AD2d 411).

The defendant's contention alleging ineffective assistance of counsel is without merit (*see People v Baldi*, 54 NY2d 137, 151-152).

The sentence imposed was not excessive (*see Penal Law § 70.04[3][b]*; *People v Thompson*, 60 NY2d 513, 519).

The defendant's remaining contentions, including those raised in his supplemental pro se brief, are without merit.

RIVERA, J.P., SPOLZINO, FLORIO and ANGIOLILLO, 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