

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

D16897
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_____AD3d_____

Submitted - October 22, 2007

STEPHEN G. CRANE, J.P.
GLORIA GOLDSTEIN
ANITA R. FLORIO
MARK C. DILLON, JJ.

2005-07586

DECISION & ORDER

The People, etc., respondent,
v Samel Small, a/k/a Samuel Small, appellant.

(Ind. No. 5980/04)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Thomas M. Ross, and Noah J. Gellner of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Dowling, J.), rendered July 13, 2005, convicting him of petit larceny, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the prosecutor's summation denied him due process and a fair trial is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Nieves*, 2 AD3d 539, 540). In any event, a review of the challenged comments reveals that they were either fair comment on the evidence adduced at trial or responsive to defense counsel's summation (*see People v McHarris*, 297 AD2d 824, 825; *People v Cariola*, 276 AD2d 800).

CRANE, J.P., GOLDSTEIN, FLORIO and DILLON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

November 13, 2007

PEOPLE v SMALL, SAMEL, a/k/a SMALL, SAMUEL