

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

D16998
Y/cb

_____AD3d_____

Submitted - October 30, 2007

DAVID S. RITTER, J.P.
GLORIA GOLDSTEIN
PETER B. SKELOS
MARK C. DILLON, JJ.

2005-03509

DECISION & ORDER

The People, etc., respondent,
v Carlos Colon, appellant.

(Ind. No. 474/04)

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

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,
Nicoletta J. Caferri, and Benjamin M. Mastaitis of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Lewis, J.), rendered March 3, 2005, convicting him of burglary in the second degree, criminal possession of stolen property, and criminal possession of burglar's tools, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contentions that the prosecutor's remarks during summation constituted reversible error are unpreserved for appellate review (*see* CPL 470.05[2]; *People v Doran*, 27 AD3d 480; *People v White*, 5 AD3d 511). In any event, the contentions are without merit. The prosecutor's comments during summation that are alleged to be prejudicial were either fair comment upon the evidence or a fair response to arguments presented in summation by defense counsel, or constituted harmless error (*see* *People v Crimmins*, 36 NY2d 230, 241-242; *People v Prince*, 36 AD3d 833, 834; *People v Urena*, 24 AD3d 693; *People v Meyers*, 13 AD3d 395).

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

RITTER, J.P., GOLDSTEIN, SKELOS and DILLON, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court