

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

D17290
O/kmg

_____AD3d_____

Submitted - November 26, 2007

HOWARD MILLER, J.P.
STEPHEN G. CRANE
MARK C. DILLON
RUTH C. BALKIN, JJ.

2000-05779

DECISION & ORDER

The People, etc., respondent,
v Salvatore DiFiore, appellant.

(Ind. No. 3284/98)

Lynn W. L. Fahey, New York, N.Y. (Katherine R. Schaefer of counsel), for appellant.

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

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Roman, J.), rendered May 17, 2000, convicting him of burglary in the second degree and grand larceny in the fourth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, given the strong and positive identification testimony, any inferential bolstering which may have occurred was harmless, as there was overwhelming evidence of the defendant's guilt, and no significant probability that the error contributed to his convictions (*see People v Mobley*, 56 NY2d 584, 585; *People v Crimmins*, 36 NY2d 230, 241-242, *aff'd* 38 NY2d 407; *People v Sealy*, 35 AD3d 510, 511; *People v Stanley* 185 AD2d 827, 828-829; *cf. People v Caserta*, 19 NY2d 18, 21; *People v Bacenet*, 297 AD2d 817, 818).

The trial court properly exercised its discretion in declining to sanction the People for the lost *Rosario* material (*see People v Rosario*, 9 NY2d 286, *cert deneid* 368 US 866) in the absence

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of bad faith on the part of the People or any prejudice to the defendant (*see People v Samuels*, 289 AD2d 514; *cf.* CPL 240.75; *People v Martinez*, 71 NY2d 937, 940; *People v Sorbello*, 285 AD2d 88, 90-93).

MILLER, J.P., CRANE, DILLON and BALKIN, JJ., concur.

ENTER 

James Edward Pelzer
Clerk of the Court