

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

D17839  
C/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - January 3, 2008

WILLIAM F. MASTRO, J.P.  
STEVEN W. FISHER  
MARK C. DILLON  
WILLIAM E. McCARTHY, JJ.

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2006-00882

DECISION & ORDER

The People, etc., respondent,  
v Francisco Leal, appellant.

(Ind. No. 1979/04)

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Steven Banks, New York, N.Y. (Natalie Rea of counsel; Jillian D. Howell on the brief), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Sharon Y. Brodt, and Quynnda L. Henry of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Lewis, J.), rendered December 6, 2005, convicting him of burglary in the first degree, burglary in the second degree, intimidating a victim in the third degree, assault in the second degree, and endangering the welfare of a child (three counts), upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's claim that he was prejudiced by the trial court's instruction on burglary in the first degree (*see People v Gaines*, 74 NY2d 358) is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Thomas*, 46 AD3d 712; *People v Currella*, 296 AD2d 578), and, in any event, is without merit (*see People v Charles*, 234 AD2d 53; *People v Fenderson*, 203 AD2d 585, 586).

February 19, 2008

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The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80, 85-86).

MASTRO, J.P., FISHER, DILLON and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, looping initial "J".

James Edward Pelzer  
Clerk of the Court