

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

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Submitted - March 14, 2008

PETER B. SKELOS, J.P.
JOSEPH COVELLO
RANDALL T. ENG
JOHN M. LEVENTHAL, JJ.

2006-05308

DECISION & ORDER

The People, etc., respondent,
v George Cruz, appellant.

(Ind. No. 717/04)

Steven Banks, New York, N.Y. (Jeffrey Dellheim of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano and Karen Wigle Weiss of counsel; Lijue T. Philip on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Braun, J.), rendered May 9, 2006, convicting him of burglary in the second degree and criminal possession of stolen property in the fifth degree, after a nonjury trial, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that the trial court's verdict was not against the weight of the evidence. While the defendant argues that the testimony of the People's witnesses was inconsistent and incredible, resolution of issues of credibility is primarily a matter to be determined by the fact-finder, which saw and heard the witnesses (*see People v Romero*, 7 NY3d 633, 644-645). Its determination is accorded great weight on appeal and should not be disturbed unless clearly unsupported by the record (*see People v Garafolo*, 44 AD2d 86, 88). 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*, 7 NY3d 633; *People v Prahalad*, 295 AD2d 373; *People v Booker*, 158 AD2d 700).

SKELOS, J.P., COVELLO, ENG and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

April 15, 2008

PEOPLE v CRUZ, GEORGE