

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

D25988
O/prt

_____AD3d_____

Submitted - January 11, 2010

PETER B. SKELOS, J.P.
DANIEL D. ANGIOLILLO
RUTH C. BALKIN
PLUMMER E. LOTT, JJ.

2008-08039

DECISION & ORDER

The People, etc., respondent,
v Oscar D. Mathes, appellant.

(Ind. No. 3826/07)

Robert C. Mitchell, Riverhead, N.Y. (Kirk R. Brandt of counsel), for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Michael J. Miller of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (Braslow, J.), rendered July 25, 2008, convicting him of burglary in the third degree and possession of burglar's tools, after a nonjury trial, and imposing sentence.

ORDERED that the judgment is affirmed.

As a threshold matter, the defendant's challenge to the legal sufficiency of the evidence supporting his conviction is unpreserved for appellate review (*see People v Hawkins*, 11 NY3d 484, 492). In any event, viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620), we find that it was legally sufficient to establish the defendant's guilt beyond a reasonable doubt (*see CPL 470.15[5]; People v Taylor*, 94 NY2d 910, 911).

Moreover, in fulfilling our responsibility to conduct an independent review of the weight of the evidence (*see CPL 470.15[5]; People v Danielson*, 9 NY3d 342), we nevertheless accord great deference to the factfinder's opportunity to view the witnesses, hear the testimony, and observe demeanor (*see People v Mateo*, 2 NY3d 383, 410, *cert denied* 542 US 946; *People v Bleakley*, 69 NY2d 490, 495). Upon reviewing the record here, we are satisfied that the verdict of

guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

SKELOS, J.P., ANGIOLILLO, BALKIN and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court