

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

D26013
C/kmg

_____AD3d_____

Submitted - January 5, 2010

MARK C. DILLON, J.P.
JOSEPH COVELLO
HOWARD MILLER
CHERYL E. CHAMBERS, JJ.

2008-02337

DECISION & ORDER

The People, etc., respondent,
v Alberto Gonzalez, appellant.

(Ind. No. 2391/06)

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

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Jeanette Lifschitz, and Jaclyn Belson of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Lasak, J.), rendered September 5, 2007, convicting him of burglary in the second degree (two counts), upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that because all of the evidence in the case was circumstantial, the Supreme Court should have given a circumstantial evidence charge to the jury. However, since the defendant did not request such a charge, or object to the charge as given, his contention is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Reyes*, 45 AD3d 785, 786). In any event, “this represents the exceptional case where the failure to give the circumstantial evidence charge was harmless error” (*People v Brian*, 84 NY2d 887, 889; *see People v Lopez*, 28 AD3d 234, 235).

The defendant was not deprived of the effective assistance of counsel, as defense

counsel provided meaningful representation (*see People v Benevento*, 91 NY2d 708, 712; *People v Baldi*, 54 NY2d 137, 147; *People v Lopez*, 28 AD3d at 235).

DILLON, J.P., COVELLO, MILLER and CHAMBERS, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court