

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

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_____AD3d_____

Submitted - May 7, 2010

WILLIAM F. MASTRO, J.P.
FRED T. SANTUCCI
CHERYL E. CHAMBERS
SHERI S. ROMAN, JJ.

2007-08348

DECISION & ORDER

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

(Ind. No. 06-00222)

John P. Savoca, Yorktown Heights, N.Y., for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (Raffaelina Gianfrancesco,
Richard Longworth Hecht, and Anthony J. Servino of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Westchester County (Adler, J.), rendered August 2, 2007, convicting him of burglary in the second degree (10 counts) and criminal possession of stolen property in the fifth degree (2 counts), upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing (DiBella, J.), of that branch of the defendant's omnibus motion which was to suppress physical evidence.

ORDERED that the judgment is affirmed.

That branch of the defendant's omnibus motion which was to suppress physical evidence was properly denied (*see People v Brewer*, _____AD3d_____ [decided herewith]).

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 of burglary in the second degree beyond a reasonable doubt (*see People v Madho*, 22 AD3d 767; *People v Martinez*, 17 AD3d 606). Moreover, upon the exercise of our independent factual review power, we are satisfied that the verdict of guilt was not against the weight of the evidence (*see CPL* 470.15[5]).

May 25, 2010

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Finally, the defendant's arguments concerning an alleged conflict of interest and alleged ineffective assistance of counsel are based on matter dehors the record and, therefore, cannot be reviewed on direct appeal (*see People v Finch*, 279 AD2d 588; *People v Joseph*, 266 AD2d 237).

MASTRO, J.P., SANTUCCI, CHAMBERS and ROMAN, 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