

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

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Y/hu

_____AD3d_____

Argued - December 9, 2010

A. GAIL PRUDENTI, P.J.
ANITA R. FLORIO
RUTH C. BALKIN
JOHN M. LEVENTHAL, JJ.

2009-04482

DECISION & ORDER

The People, etc., respondent,
v Malik Brown, appellant.

(Ind. No. 12742/07)

Lynn W. L. Fahey, New York, N.Y. (A. Alexander Donn of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Jodi L. Mandel, and Adam Koelsch of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Chun, J.), rendered April 23, 2009, convicting him of burglary in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that he was deprived of a fair trial because of certain alleged improper remarks made by the prosecutor during summation. Other than the prosecutor's remarks that the defendant alleges misrepresented the evidence and improperly suggested that only the guilty flee, which were generally objected to during summation and specifically objected to in postsummation motions, the defendant's contentions are unpreserved for appellate review (*see* CPL 470.05[2]; *People v Romero*, 7 NY3d 911; *People v Dien*, 77 NY2d 885; *People v Brewster*, 69 AD3d 750). In any event, most of the challenged remarks were proper because they were within the broad bounds of rhetorical comment permissible in closing arguments, fair comment on the evidence, or responsive to arguments and theories presented in the defense summation (*see People v Halm*, 81 NY2d 819, 821; *People v Galloway*, 54 NY2d 396, 399; *People v Ashwal*, 39 NY2d 105, 109-110; *People v Torres*, 71 AD3d 1063; *People v Turner*, 214 AD2d 594). To the extent that some of the

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challenged remarks were improper, any error resulting from those remarks was harmless (*see People v Crimmins*, 36 NY2d 230; *People v Martin*, 54 AD3d 776, 777; *People v Summa*, 33 AD3d 735).

PRUDENTI, P.J., FLORIO, BALKIN and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court