

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

D33393
O/kmb

_____AD3d_____

Submitted - December 6, 2011

REINALDO E. RIVERA, J.P.
RANDALL T. ENG
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2010-02885

DECISION & ORDER

The People, etc., respondent,
v Melvin Collins, appellant.

(Ind. No. 3157/07)

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 Rona I. Kugler of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (McGann, J.), rendered March 8, 2010, convicting him of robbery in the second degree (two counts), attempted robbery in the second degree (two counts), criminal possession of a weapon in the third degree (two counts), unauthorized use of a vehicle in the third degree, and resisting arrest, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the Supreme Court properly admitted a recording of a telephone call made by the defendant while he was incarcerated (*see People v Ely*, 68 NY2d 520, 527-528; *People v McGee*, 49 NY2d 48, 59-60, *cert denied sub nom. Waters v New York*, 446 US 942). A sufficient foundation was established through the testimony of a senior program specialist for the Department of Corrections, who testified, inter alia, that he was familiar with the recording system at the prison, that the prison routinely recorded the inmates' telephone calls, and that the recordings were housed in a computer system and identified by an inmate's unique book and case number (*see People v Cratsley*, 86 NY2d 81, 89-91; *People v Kennedy*, 68 NY2d 569, 575-578; *cf. People v Manor*, 38 AD3d 1257).

December 27, 2011

PEOPLE v COLLINS, MELVIN

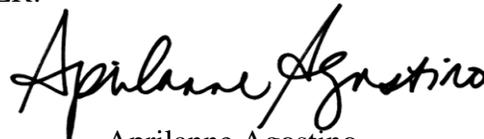
Page 1.

We reject the defendant's contention that he was deprived of a fair trial by improper comments made during summation by the prosecutor. The challenged remarks were within the bounds of permissible rhetorical comment, fair response to arguments and issues raised by the defense, fair comment on the evidence, or cured by the trial court's charge to the jury (*see People v Cabrera*, 85 AD3d 942, 943).

The defendant's contention that the jury charge on consciousness of guilt was deficient is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Mella-Rodriguez*, 39 AD3d 671, 672), and, in any event, is without merit (*see People v Knight*, 261 AD2d 487, 487).

RIVERA, J.P., ENG, ROMAN and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court