

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

D35570
Y/kmb

_____AD3d_____

Submitted - June 11, 2012

MARK C. DILLON, J.P.
THOMAS A. DICKERSON
ARIEL E. BELEN
SANDRA L. SGROI, JJ.

2010-04788

DECISION & ORDER

The People, etc., respondent,
v Jose Burgos, appellant.

(Ind. No. 91/08)

Lynn W. L. Fahey, New York, N.Y. (Allegra Glashausser of counsel), for appellant.

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

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Hanophy, J.), rendered May 6, 2010, convicting him of burglary in the second degree, possession of burglar's tools, petit larceny, criminal possession of stolen property in the fifth degree, and resisting arrest, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant failed to preserve for appellate review the challenges he now raises to portions of the prosecutor's summation (*see* CPL 470.05[2]; *People v Bey*, 71 AD3d 1156, 1157; *People v Philbert*, 60 AD3d 698, 699; *People v Gill*, 54 AD3d 965; *People v Gillespie*, 36 AD3d 626; *People v Siriani*, 27 AD3d 670). In any event, the challenged remarks were fair comment on the evidence, responsive to arguments and theories raised by the defense, or otherwise remained within the "broad bounds of rhetorical comment permissible in closing argument" (*People v Galloway*, 54 NY2d 396, 399; *see People v Wilson*, 77 AD3d 858; *People v Bravo*, 69 AD3d 870; *People v Dorgan*, 42 AD3d 505; *People v Ravenell*, 307 AD2d 977; *People v Valdes*, 291 AD2d 513).

The sentence imposed was not excessive (*see* CPL 470.15[2][c], [6][b]; 470.20[6];

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People v Thompson, 60 NY2d 513, 519; *People v Suitte*, 90 AD2d 80).

DILLON, J.P., DICKERSON, BELEN and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court