

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

882

**KA 07-02063**

PRESENT: MARTOCHE, J.P., SMITH, FAHEY, CARNI, AND GREEN, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

RAYMOND E. JOSEPH, III, DEFENDANT-APPELLANT.  
(APPEAL NO. 1.)

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GARY A. HORTON, PUBLIC DEFENDER, BATAVIA (BRIDGET L. FIELD OF COUNSEL), FOR DEFENDANT-APPELLANT.

LAWRENCE FRIEDMAN, DISTRICT ATTORNEY, BATAVIA (ROBERT R. ZICKL OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Genesee County Court (Robert C. Noonan, J.), rendered July 9, 2007. The judgment convicted defendant, upon a jury verdict, of burglary in the third degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him upon a jury verdict of burglary in the third degree (Penal Law § 140.20). The evidence, viewed in the light most favorable to the People (*see People v Contes*, 60 NY2d 620, 621), is legally sufficient to establish that defendant entered the building with the intent to commit a crime therein (*see People v Gates*, 170 AD2d 971, *lv denied* 78 NY2d 922). Defendant's further challenges to the legal sufficiency of the evidence are not preserved for our review (*see People v Gray*, 86 NY2d 10, 19). Viewing the evidence in light of the elements of the crime as charged to the jury (*see People v Danielson*, 9 NY3d 342, 349), we conclude that the verdict is not against the weight of the evidence (*see generally People v Bleakley*, 69 NY2d 490, 495). Defendant failed to preserve for our review his contentions that County Court's *Sandoval* ruling constituted an abuse of discretion (*see People v Robles*, 38 AD3d 1294, 1295, *lv denied* 8 NY3d 990), and that he was denied a fair trial by the prosecutor's allegedly improper remarks on summation (*see People v Searles*, 28 AD3d 1205, *lv denied* 7 NY3d 817). We decline to exercise our power to review those contentions as a matter of discretion in the interest of justice (*see CPL 470.15 [6] [a]*). Finally, the sentence is not unduly harsh or severe.

Entered: June 5, 2009

Patricia L. Morgan  
Clerk of the Court