

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

D13903
X/hu

_____AD3d_____

Argued - January 12, 2007

ROBERT W. SCHMIDT, J.P.
STEPHEN G. CRANE
STEVEN W. FISHER
THOMAS A. DICKERSON, JJ.

2006-01363

DECISION & ORDER

The People, etc., respondent,
v Cy Green, appellant.

(Ind. No. 3521/83)

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Phyllis Mintz of counsel), for appellant.

Beldock Levine & Hoffman, LLP, New York, N.Y. (Myron Beldock of counsel), for respondent.

Appeal by the People, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Pesce, J.), dated January 4, 2006, as, after a hearing, granted that branch of the defendant's motion pursuant to CPL 440.10 which was to vacate a judgment of conviction of the same court rendered May 31, 1985, convicting him of murder in the second degree and robbery in the first degree, upon a jury verdict, and imposing sentence, on the ground of ineffective assistance of counsel.

ORDERED that the order is affirmed.

The defendant established at the hearing on his motion that his trial counsel, without a reasonable strategic reason, failed to interview or even contact potential witnesses known to counsel prior to trial, including an eyewitness to the crime, who could have offered exculpatory

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testimony substantiating the defense of misidentification (*see People v Fogle*, 10 AD3d 618, 619; *People v Bussey*, 6 AD3d 621, 623; *People v Maldonado*, 278 AD2d 513, 514; *People v Rojas*, 213 AD2d 56, 67-70; *People v Baba-Ali*, 179 AD2d 725, 729). Accordingly, the hearing court properly determined that the defendant was denied the effective assistance of counsel and granted that branch of the defendant's motion pursuant to CPL 440.10 which was to vacate the judgment of conviction.

SCHMIDT, J.P., CRANE, FISHER and DICKERSON, 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