

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

D16025
W/hu

_____AD3d_____

Submitted - June 11, 2007

HOWARD MILLER, J.P.
GLORIA GOLDSTEIN
STEVEN W. FISHER
JOSEPH COVELLO, JJ.

2003-09171

DECISION & ORDER

The People, etc., respondent,
v Aneudi Morel, appellant.

(Ind. No. 02-00996)

Scott B. Tulman, New York, N.Y. (Michael K. Bachrach of counsel), for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (Maria Wager, Richard Longworth Hecht, and Anthony J. Servino of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Westchester County (Lange, J.), rendered September 5, 2003, convicting him of burglary in the first degree (two counts), robbery in the first degree (six counts), robbery in the second degree (three counts), and grand larceny in the fourth degree (three counts), upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

At trial, one of the complainants testified that she had provided the police with a written statement, and other complainants testified that a 911 call had been placed shortly after the subject crimes had been committed. The defendant claims, on appeal, that the statement and the tape of the 911 call should have been made available to him pursuant to CPL 240.45. However, when the defendant first became aware of these materials, he failed to request any corrective action from the County Court. Rather, defense counsel made the tactical choice to elicit evidence tending to disprove the existence of the materials, and then use that evidence to impugn the credibility of the complainants. The defendant's *Rosario* claims (*see People v Rosario*, 9 NY2d 286, *cert denied* 386 US 866) are therefore unpreserved for appellate review (*see People v Feerick*, 93 NY2d 433, 452; *People v Williams*, 78 NY2d 1087). Moreover, defense counsel's strategy in using the absence of the

September 11, 2007

Page 1.

PEOPLE v MOREL, ANEUDI

material to impeach the complainants' credibility was reasonable and demonstrates that the defendant was afforded meaningful representation (*see People v Benevento*, 91 NY2d 708; *People v Downs*, 38 AD3d 1019, *lv denied* 8 NY3d 984).

MILLER, J.P., GOLDSTEIN, FISHER and COVELLO, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer
Clerk of the Court