

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

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_____AD3d_____

Argued - December 18, 2007

REINALDO E. RIVERA, J.P.
DAVID S. RITTER
MARK C. DILLON
EDWARD D. CARNI, JJ.

2006-02844

DECISION & ORDER

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

(Ind. No. 2465/04)

Charles T. Glaws, New York, N.Y., for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Anne C. Feigus, and Clare Cusack of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Lott, J.), rendered February 28, 2006, convicting him of rape in the first degree and sodomy in the first degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant moved for a mistrial on the ground that the People failed to disclose a certain document in violation of *Brady v Maryland* (373 US 83). However, even assuming that the document at issue constituted *Brady* material, the Supreme Court did not err in denying the defendant's motion. While the People unquestionably have a duty to disclose exculpatory material in their control, a defendant's constitutional right to a fair trial is not violated when, as here, he is given a meaningful opportunity to use the allegedly exculpatory material to cross-examine the People's witnesses or as evidence during his case (*see People v Cortijo*, 70 NY2d 868, 870; *People v Myron*, 28 AD3d 681, *cert denied* 127 S Ct 1919).

February 5, 2008

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The defendant's remaining contentions are without merit.

RIVERA, J.P., RITTER, DILLON and CARNI, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court