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

D18400
X/kmg

_____AD3d_____ Submitted - February 11, 2008

ROBERT A. SPOLZINO, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON, JJ.

2005-07962 DECISION & ORDER

The People, etc., respondent,
v Jeffrey Kline, appellant.

(Ind. No. 388/04)

James D. Licata, New City, N.Y. (Lois Cappelletti of counsel), for appellant.

Thomas P. Zugibe, District Attorney, New City, N.Y. (Vered Adoni and Elana L. Yeger of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Rockland County (Zambelli, J.), rendered August 2, 2005, convicting him of rape in the third degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, there was no *Brady* violation (*see Brady v Maryland*, 373 US 83) in the instant case (*see People v LaValle*, 3 NY3d 88, 110; *People v Cortijo*, 70 NY2d 868, 870). Furthermore, the trial court providently exercised its discretion in denying the defendant's motion to dismiss the indictment because of a *Rosario* violation (*see People v Rosario*, 9 NY2d 286), since there was no showing that the defendant was substantially prejudiced (*see People v Martinez*, 71 NY2d 937, 940; *People v Best*, 186 AD2d 141).

The defendant's contention that the evidence was legally insufficient to establish his guilt of rape in the third degree is unpreserved for appellate review (*see* CPL 470.05[2]). In any event, viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620, 621), we find that it was legally sufficient to establish the defendant's guilt beyond a

reasonable doubt. Resolution of issues of credibility is primarily a matter to be determined by the jury, which saw and heard the witnesses, and its determination should be accorded great deference on appeal (*see People v Romero*, 7 NY3d 633, 644-645). Upon the exercise of our factual review power (*see* CPL 470.15[5]), we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

SPOLZINO, J.P., FLORIO, ANGIOLILLO and DICKERSON, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court