

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

D19900
O/kmg

_____AD3d_____

Argued - May 22, 2008

STEVEN W. FISHER, J.P.
EDWARD D. CARNI
WILLIAM E. McCARTHY
ARIEL E. BELEN, JJ.

2006-05156

DECISION & ORDER

The People, etc., respondent,
v Roderick McClain, appellant.

(Ind. No. 955/05)

Steven Banks, New York, N.Y. (Susan Epstein of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,
Nicoletta J. Cafferri, and Ushir Pandit of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Cooperman, J.), rendered May 18, 2006, convicting him of assault in the second degree and resisting arrest, 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 this case. *Brady* does not require that a prosecutor "supply a defendant with evidence when the defendant knew of, or should reasonably have known of, the evidence and its exculpatory nature" (*People v Doshi*, 93 NY2d 499, 506; *see People v Singh*, 5 AD3d 403; *People v Tangney*, 306 AD2d 360; *People v Rodriguez*, 223 AD2d 605; *People v Deas*, 174 AD2d 751). Here, the defendant and defense counsel knew of the possibility that the defendant's arrest was captured by a surveillance camera from a nearby housing project. Further, the defendant consistently claimed the surveillance videotape would be exculpatory. Since the defendant knew of the possibility that the tape existed, it was not *Brady* material even if exculpatory (*see People v Singh*, 5 AD3d 403; *People v Tangney*, 306 AD2d 360). Further, the prosecutor had no obligation to obtain, by subpoena duces tecum, demanded material which the defendant may himself have obtained (*see CPL* 240.20[2]).

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

The defendant's remaining contention does not require reversal.

FISHER, J.P., CARNI, McCARTHY and BELEN, 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