

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

D22174
W/kmg

_____AD3d_____

Argued - January 20, 2009

REINALDO E. RIVERA, J.P.
DANIEL D. ANGIOLILLO
EDWARD D. CARNI
WILLIAM E. McCARTHY, JJ.

2005-03518

DECISION & ORDER

The People, etc., respondent,
v Louis Fortunato, a/k/a George Navas, a/k/a
Lewis Johnson, appellant.

(Ind. No. 1757/99)

Lynn W. L. Fahey, New York, N.Y. (Tonya Plank of counsel), for appellant, and
appellant pro se.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,
Jeanette Lifschitz, Muhammad Ikhlaz, and Danielle Fenn of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County
(Rotker, J.), rendered May 18, 2004, convicting him of robbery in the first degree, robbery in the
second degree, and criminal possession of stolen property in the fifth degree, upon a jury verdict, and
imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the Supreme Court properly granted the
People's reverse *Batson-Kern* application (*see Batson v Kentucky*, 476 US 79; *People v Kern*, 75
NY2d 638). The court's determination that the facially race-neutral reasons proffered by defense
counsel to explain the two peremptory challenges in question were pretextual is entitled to great
deference on appeal and will not be disturbed where, as here, it is supported by the record (*see People*
v Boston, 52 AD3d 728, 728-729; *People v Quito*, 43 AD3d 411, 412-413; *People v Thompson*, 34
AD3d 852, 853).

February 24, 2009

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Moreover, contrary to the defendant's contention raised in Point I of his supplemental pro se brief, the defendant was not denied the effective assistance of counsel (*see People v Benevento*, 91 NY2d 708; *People v Baldi*, 54 NY2d 137). Finally, contrary to the defendant's contention raised in Point II of his supplemental pro se brief, there was no *Brady* violation (*see Brady v Maryland*, 373 US 83).

RIVERA, J.P., ANGIOLILLO, CARNI and McCARTHY, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court