

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

D22798
G/kmg

_____AD3d_____

Submitted - February 27, 2009

WILLIAM F. MASTRO, J.P.
THOMAS A. DICKERSON
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2007-10481

DECISION & ORDER

The People, etc., respondent,
v Andrew Young, appellant.

(Ind. No. 11004/06)

Lynn W. L. Fahey, New York, N.Y. (Benjamin D. Gold of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,
Johnnette Traill, and Suzanne H. Sullivan of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Latella, J.), rendered November 1, 2007, convicting him of criminal sale of a controlled substance in the third degree, criminal possession of a controlled substance in the third degree, and criminal possession of a controlled substance in the fourth degree, after a nonjury trial, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that the trial court's failure to impose sanctions for the People's alleged failure to disclose alleged *Rosario* material (*see People v Rosario*, 9 NY2d 286, *cert denied* 368 US 866; CPL 240.45) denied him a fair trial. However, the record does not demonstrate a "factual basis that the [material] in question actually existed and also incorporated statements made by a witness concerning the subject matter of the incident" (*People v Pines*, 298 AD2d 179, 180; *see People v Smith*, 33 AD3d 462, 464; *see also People v Melendez*, 259 AD2d 500; *People v Ray*, 224 AD2d 722). Accordingly, the Supreme Court properly declined to draw an adverse inference based on the People's alleged failure to disclose alleged *Rosario* material (*see People v Smith*, 33 AD3d at 464; *see also People v Melendez*, 259 AD2d at 500; *People v Ray*, 224 AD2d at 722).

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The defendant's contention that this matter should be remitted for a *Rosario* hearing is without merit, since the defendant failed to articulate a factual basis for the assertion that the alleged *Rosario* material existed (*see People v Brown*, 286 AD2d 340, 341; *People v Rodriguez*, 270 AD2d 505; *People v Baptiste*, 269 AD2d 536, 537; *cf. People v Dockery*, 278 AD2d 427, 427-428).

MASTRO, J.P., DICKERSON, BELEN and CHAMBERS, 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