

=====
This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 125
The People &c.,
Respondent,
v.
Richard D. DiGuglielmo,
Appellant.

Andrew H. Schapiro, for appellant.
Raffaelina Gianfrancesco, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed.

Assuming that defendant made a specific request for the material alleged to be exculpatory, we find no reasonable possibility that any failure to disclose it contributed to the verdict (see People v Vilardi, 76 NY2d 67, 77 [1990]). Moreover,

we reject defendant's claim that the evidence supporting his conviction of depraved indifference murder is legally insufficient because of our decision in People v Feingold (7 NY3d 288 [2006]). The standard enunciated in Feingold simply does not apply retroactively to cases on collateral review (see Policano v Herbert, 7 NY3d 588, 603-604 [2006]), and defendant's claim that such a result violates the federal Due Process Clause is without merit (Wainwright v Stone, 414 US 21, 23-24 [1973]).

* * * * *

Order affirmed, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided June 23, 2011