

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, at Foley Square, in the City of New York, on the 8th day of October, two thousand four.

Present: HON. THOMAS J. MESKILL,
HON. ROGER J. MINER,
HON. ROBERT A. KATZMANN,
Circuit Judges.

DARRYL PLUNKETT,

Petitioner-Appellant,

No. 03-2458

- v -

JOHN P. KEANE,

Respondent-Appellee.

Appearing for Petitioner-Appellant:

VIDA M. ALVY, Alvy & Jacobson, New
York, NY

Appearing for Respondent-Appellee:

SOLOMON NEUBORT, Assistant District
Attorney (Leonard Joblove and Ann
Bordley, *of counsel*), for Charles J. Hynes,
District Attorney of King's County,
Brooklyn, NY

Appeal from the United States District Court for the Eastern District of New York
(Weinstein, J.).

**ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED,
AND DECREED** that the judgment of the district court be and hereby is **AFFIRMED**.

The parties' familiarity with the facts is assumed. We conclude for the reasons stated by the district court that the Appellant was not substantially prejudiced by any delay in transmitting the notes of Detective Chmil's interview with Armstead.

Moreover Appellant has not established a *Rosario* violation as to the claims regarding Hamilton's identification. *See People v. Rosario*, 9 N.Y.2d 286 (1961). Appellant did not establish before the district court that records of Hamilton's identification exist.

Accordingly, the judgment of the district court is **AFFIRMED**.

FOR THE COURT:
ROSEANN B. MacKECHNIE, CLERK
By:
