

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

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Submitted - January 2, 2007

HOWARD MILLER, J.P.
ROBERT A. SPOLZINO
DAVID S. RITTER
MARK C. DILLON, JJ.

2004-09505

DECISION & ORDER

The People, etc., respondent,
v Darrill Dupree, appellant.

(Ind. No. 8544/03)

Lynn W. L. Fahey, New York, N.Y. (Michelle Mogal of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Thomas M. Ross, and Michael P. Holland of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Guzman, J.), rendered October 4, 2004, convicting him of attempted burglary in the second degree, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing (Starkey, J.), of that branch of the defendant's omnibus motion which was to suppress identification testimony.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention on appeal, the show-up identification, which was conducted in close geographic and temporal proximity to the crime, was reasonable under the circumstances and not unduly suggestive (*see People v Chipp*, 75 NY2d 327; *People v Rosa*, 231 AD2d 534; *People v Mitchell*, 185 AD2d 249; *cf. People v Ortiz*, 90 NY2d 533). Thus, the Supreme Court properly denied that branch of the defendant's omnibus motion which was to suppress identification testimony.

MILLER, J.P., SPOLZINO, RITTER and DILLON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

February 6, 2007

PEOPLE v DUPREE, DARRILL