

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

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_____AD3d_____

Submitted - June 7, 2007

REINALDO E. RIVERA, J.P.
GABRIEL M. KRAUSMAN
PETER B. SKELOS
RUTH C. BALKIN, JJ.

2004-00423

DECISION & ORDER

The People, etc., respondent,
v Kelvin Santos, appellant.

(Ind. No. 8695/02)

Ralph Cherchian, Forest Hills, N.Y., for appellant, and appellant pro se.

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

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Marrus, J.), rendered December 23, 2003, convicting him of criminal sale of a controlled substance in the third degree (three counts) and conspiracy in the third degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620), we find that it was legally sufficient to establish the defendant's guilt of conspiracy in the third degree beyond a reasonable doubt. Moreover, resolution of issues of credibility is primarily a matter to be determined by the jury, which saw and heard the witnesses, and its determination should be accorded great deference on appeal (*see People v Romero*, 7 NY3d 633, 644-645; *People v Mateo*, 2 NY3d 383, 410, *cert denied* 542 US 946). Upon the exercise of our factual review power (*see CPL 470.15[5]*), we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero, supra*).

July 31, 2007

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The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80, 83).

RIVERA, J.P., KRAUSMAN, SKELOS and BALKIN, 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