

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

D18794
C/prt

_____AD3d_____

Submitted - February 26, 2008

ROBERT A. SPOLZINO, J.P.
DAVID S. RITTER
FRED T. SANTUCCI
EDWARD D. CARNI, JJ.

2005-06956

DECISION & ORDER

The People, etc., respondent,
v Juavon C. Dash, appellant.

(Ind. No. 106/04)

Carol Kahn, New York, N.Y., for appellant.

William V. Grady, District Attorney, Poughkeepsie, N.Y. (Bridget Rahilly Steller of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Dutchess County (Hayes, J.), rendered June 30, 2005, convicting him of criminal sale of a controlled substance in the third degree (four counts), criminal possession of a controlled substance in the third degree, and criminal possession of a controlled substance in the fourth degree, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing, of that branch of the defendant's omnibus motion which was to suppress identification evidence.

ORDERED that the judgment is affirmed.

The County Court properly denied that branch of the defendant's omnibus motion which was to suppress the confidential informant's identification. That identification was confirmatory in nature and was not unduly suggestive (*see People v Rodriguez*, 79 NY2d 445, 450; *People v Graham*, 283 AD2d 885, 886).

Moreover, the defendant's contention that the County Court erred in summarily denying that branch of his omnibus motion which was to suppress physical evidence without a hearing is also without merit. "Hearings are not automatic or generally available for the asking by boilerplate allegations" (*People v Mendoza*, 82 NY2d 415, 422). The defendant failed to deny the People's

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allegations that he had sold cocaine to confidential informants on four separate occasions, and thus failed to raise any issue of fact requiring a *Mapp* hearing (*see Mapp v Ohio*, 367 US 643) regarding probable cause (*cf. People v Burton*, 6 NY3d 584, 587).

The defendant's contention that the County Court erred in denying his motion for a mistrial on the ground that the People had placed the defendant's prior uncharged crimes before the jury without a *Molineux* hearing (*see People v Molineux*, 168 NY 264) is without merit. The People did not introduce any evidence of prior uncharged crimes (*see generally People v Molineux*, 168 NY at 293; *see also People v Manino*, 306 AD2d 542; *People v Balazs*, 258 AD2d 658, 659; *People v Cornish*, 280 AD2d 552, 553).

The defendant's challenge to the legal sufficiency of the evidence is unpreserved for appellate review (*see CPL 470.05[2]*). In any event, 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 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*, 7 NY3d 633).

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

SPOLZINO, J.P., RITTER, SANTUCCI and CARNI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court