

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

D20213  
Y/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - June 10, 2008

DAVID S. RITTER, J.P.  
HOWARD MILLER  
MARK C. DILLON  
WILLIAM E. McCARTHY, JJ.

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2006-04115  
2007-09854

DECISION & ORDER

The People, etc., respondent,  
v James Franklin, appellant.

(Ind. No. 5850/05)

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Steven Banks, New York, N.Y. (John Schoeffel of counsel), and Simpson Thacher & Bartlett, LLP, New York, N.Y. (Jonathan Youngwood and Amy Machado of counsel), for appellant (one brief filed).

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Diane R. Eisner, and Judith C. Aarons of counsel), for respondent.

Appeals by the defendant from (1) a judgment of the Supreme Court, Kings County (Marrus, J.), rendered April 20, 2006, convicting him of criminal sale of a controlled substance in the third degree (two counts), upon a jury verdict, and imposing sentence, and (2) a resentencing of the same court, imposed October 4, 2007.

ORDERED that the judgment and the resentencing are affirmed.

The defendant's contention that a portion of the court's jury charge deprived him of the force of his defense (*see generally People v Williams*, 5 NY3d 732) is unpreserved for appellate review (*see CPL 470.05[2]*). In any event, any error in this portion of the jury charge was harmless (*see People v Crimmins*, 36 NY2d 230). The defendant's remaining contentions with respect to additional alleged errors in stated portions of the jury charge are also unpreserved for appellate review (*see CPL 470.05[2]*) and, in any event, are without merit.

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The defendant's contention that the trial court's *Allen* charge (*see Allen v United States*, 164 US 492), was improper is also unpreserved for appellate review (*see CPL 470.05[2]*). In any event, the charge as a whole was balanced, proper, and encouraging rather than coercive (*see People v Kinard*, 215 AD2d 591).

Contrary to the defendant's contention, he received meaningful representation (*see People v Seaton*, 45 AD3d 875, 876; *see also People v Benevento*, 91 NY2d 708; *People v Baldi*, 54 NY2d 137).

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

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

ENTER:



James Edward Pelzer  
Clerk of the Court