

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

D20485
Y/hu

_____AD3d_____

Argued - September 9, 2008

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

2005-05979

DECISION & ORDER

The People, etc., respondent,
v Roger Selman, appellant.

(Ind. No. 2620/03)

Steven Banks, New York, N.Y. (Steven J. Miraglia of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Keith Dolan,
and Steven A. Mann of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Chambers, J.), rendered May 12, 2005, convicting him of criminal sale of a controlled substance in the second degree and conspiracy in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

At trial, a police detective testified that during an undercover purchase of narcotics from the defendant and a codefendant, he observed the defendant hand the package containing crack-cocaine to the codefendant prior to the sale. The defendant sought to impeach this testimony by questioning the detective about his failure to mention the hand-to-hand transfer during his testimony before the grand jury. An omission of fact at a prior time may not be used for impeachment purposes, however, unless it is shown that, on the previous occasion, “the witness’ attention was called to the matter and . . . he was specifically asked about the facts embraced in the question propounded at trial” (*People v Bornholdt*, 33 NY2d 75, 88, *cert denied* 416 US 905). Here, the detective was not specifically asked in the grand jury about the facts embraced in the questions propounded at trial. The defendant therefore failed to lay a proper foundation for the proposed cross-examination and the

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Supreme Court correctly sustained the People's objection (*see People v Keys*, 18 AD3d 780, 781).

The Supreme Court properly admitted the photograph from the defendant's driver's license during the testimony of a police witness regarding the method used to confirm the defendant's identity during the long-term narcotics investigation. Contrary to the defendant's contention, the photograph was probative to illustrate relevant evidence and was not shown solely to inflame the jury as to the defendant's appearance (*see People v Wood*, 79 NY2d 958, 960; *People v Chandler*, 51 AD3d 941, 942).

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