

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

D23732
Y/prt

_____AD3d_____

Submitted - May 18, 2009

ROBERT A. SPOLZINO, J.P.
DANIEL D. ANGIOLILLO
CHERYL E. CHAMBERS
L. PRISCILLA HALL, JJ.

2006-04597

DECISION & ORDER

The People, etc., respondent,
v Vincent Artis, appellant.

(Ind. No. 05-00156)

De Podwin & Murphy, Nanuet, N.Y. (Phillip J. Murphy of counsel), for appellant.

Thomas P. Zugibe, District Attorney, New City, N.Y. (Vered Adoni of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Rockland County (Kelly, J.), rendered May 1, 2006, convicting him of conspiracy in the fourth 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, 621), we find that it was legally sufficient to establish the defendant's guilt beyond a reasonable doubt. The overt act necessary to the conspiracy (*see People v Ribowsky*, 77 NY2d 284, 293; *People v Bongarzone*, 116 AD2d 164, *affd* 69 NY2d 892) was established through evidence of a series of telephone conversations concerning the delivery of the illicit substances (*see People v Hernandez*, 242 AD2d 339, 340; *People v Menache*, 98 AD2d 335, 337-338), as explained by a police officer qualified as an expert in narcotics code and jargon (*see People v Hunt*, 249 AD2d 246; *People v White*, 184 AD2d 798). Moreover, in fulfilling our responsibility to conduct an independent review of the weight of the evidence (*see CPL 470.15[5]*; *People v Danielson*, 9 NY3d 342), we nevertheless accord great deference to the jury's opportunity to view the witnesses, hear the testimony, and observe demeanor (*see People v Mateo*, 2 NY3d 383, *cert denied* 542 US 946; *People v Bleakley*, 69 NY2d 490, 495). Upon reviewing the record here, we are satisfied that the verdict

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of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

The defendant's claim that the County Court erred in failing to declare a mistrial was waived by the defendant's rejection of the County Court's offer to do so (*see People v White*, 53 NY2d 721, 723; *People v Cerami*, 33 NY2d 243, 248). In any event, any prejudice to the defendant was overcome by the prompt curative instruction given by the County Court (*see People v Berg*, 59 NY2d 294; *People v Smith*, 288 AD2d 244).

SPOLZINO, J.P., ANGIOLILLO, CHAMBERS and HALL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court