

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

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C/hu

_____AD3d_____

Argued - October 5, 2010

MARK C. DILLON, J.P.
ANITA R. FLORIO
RUTH C. BALKIN
SHERI S. ROMAN, JJ.

2008-05915

DECISION & ORDER

The People, etc., respondent,
v John Wilson, appellant.

(Ind. No. 10698/07)

Lynn W. L. Fahey, New York, N.Y. (Erin R. Collins of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Ellen C. Abbot, and Brooke E. Barnes of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Holder, J.), rendered May 21, 2008, convicting him of criminal possession of a controlled substance in the third degree and criminal possession of a controlled substance in the seventh degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contentions that he was deprived of a fair trial as a result of improper cross-examination and summation remarks made by the prosecutor are without merit. The defendant "opened the door" to questions with respect to his prior conviction of criminal sale of a controlled substance by testifying that he had never sold drugs (*People v Jones*, 278 AD2d 246, 248, citing *People v Fardan*, 82 NY2d 638, 646; see *People v Thomas*, 47 AD3d 850, 851; *People v Marable*, 33 AD3d 723, 725). Furthermore, the challenged comments in the prosecutor's summation regarding the defendant's credibility constituted fair comment on the evidence (see *People v Murphy*, 178 AD2d 615; *People v Merchant*, 150 AD2d 730, 731). In addition, the prosecutor's comment that the defendant had the benefit of hearing the prosecution's witnesses and reviewing the police paperwork before testifying was permissible (see *Portuondo v Agard*, 529 US 61, 67-68; *People v*

Bryant, 39 AD3d 768, 769; *People v Siriani*, 27 AD3d 670; *People v Portalatin*, 18 AD3d 673, 674; *People v Lowery*, 281 AD2d 491, 491-492).

The defendant's contention that he was deprived of the effective assistance of counsel is without merit (*see generally People v Benevento*, 91 NY2d 708; *People v Baldi*, 54 NY2d 137; *People v James*, 72 AD3d 844).

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

DILLON, J.P., FLORIO, BALKIN and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court