

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

D31259
C/kmb

_____AD3d_____

Submitted - April 25, 2011

MARK C. DILLON, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
L. PRISCILLA HALL, JJ.

2007-10092

DECISION & ORDER

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

(Ind. No. 96/07)

David Goodman, Poughkeepsie, N.Y. (Steven Levine of counsel), for appellant.

William V. Grady, District Attorney, Poughkeepsie, N.Y. (Kirsten A. Rappleyea of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Dutchess County (Dolan, J.), rendered October 23, 2007, convicting him of possessing a sexual performance by a child (two counts), upon his plea of guilty, and imposing sentence. The appeal brings up for review the denial, without a hearing, of that branch of the defendant's omnibus motion which was to controvert a search warrant and to suppress physical evidence seized in execution thereof.

ORDERED that the judgment is affirmed.

There is a strong judicial preference for search warrants (*see People v Hanlon*, 36 NY2d 549, 558; *People v Corr*, 28 AD3d 574; *People v Williams*, 249 AD2d 343, 344). “The search warrant application must provide the court with sufficient information to support a reasonable belief that evidence of illegal activity will be present at the specific time and place of the search” (*People v Williams*, 249 AD2d at 344).

Contrary to the defendant’s contention, the County Court properly denied, without a hearing, that branch of his omnibus motion which was to controvert a search warrant and to suppress physical evidence seized in execution of the warrant. The warrant application was

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accompanied by the affidavit of a police officer, which was supported by the sworn statement of a named informant, who had previously given the police officer reliable information. The informant's statement setting out in detail criminal activity personally observed by him was a sufficient predicate for a finding of probable cause (*see People v Corr*, 28 AD3d 574; *People v Anderson*, 190 AD2d 741).

Furthermore, the defendant was not entitled to an *Alfinito* hearing (*see People v Alfinito*, 16 NY2d 181; *see also Franks v Delaware*, 438 US 154) since, in his omnibus motion, he challenged only the veracity of the informant, and not the veracity of the police officer affiant (*see People v Slaughter*, 37 NY2d 596, 600; *People v Solimine*, 18 NY2d 477, 479; *People v Williams*, 249 AD2d at 344). In addition, the defendant's contention that an in camera hearing should have been held to determine the reliability or veracity of the informant is without merit (*see People v Anderson*, 190 AD2d at 742). “[A] defendant is entitled to a hearing in which he may challenge the truthfulness of the allegations in the affidavit supporting a search warrant only where he attacks the veracity of the police officer affiant and not where . . . the credibility of the source of information is challenged” (*People v Slaughter*, 37 NY2d at 600; *see People v Anderson*, 190 AD2d at 742).

DILLON, J.P., BALKIN, LEVENTHAL and HALL, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court