

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

D32451
H/kmb

_____AD3d_____

Argued - September 19, 2011

REINALDO E. RIVERA, J.P.
RUTH C. BALKIN
L. PRISCILLA HALL
JEFFREY A. COHEN, JJ.

2009-06572

DECISION & ORDER

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

(Ind. No. 382/08)

Lynn W. L. Fahey, New York, N.Y. (Jonathan Garvin of counsel), for appellant.

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

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Lewis, J.), rendered June 1, 2009, as amended June 29, 2009, convicting him of criminal possession of a weapon in the second degree (four counts), criminal possession of a weapon in the third degree (three counts), and criminal possession of a controlled substance in the seventh degree, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing (Aloise, J.), of that branch of the defendant's omnibus motion which was to suppress physical evidence.

ORDERED that the judgment is affirmed.

Under the circumstances of this case, the defendant's contention that certain physical evidence should have been suppressed because two police officers lacked a proper basis for questioning him is without merit (*see People v Riddick*, 70 AD3d 1421, 1422; *People v Winchester*, 14 AD3d 939, 940).

Contrary to the People's contention, the defendant's remaining arguments regarding the propriety of the two police officers' actions leading up to his arrest are properly before this Court (*see People v Gray*, 77 AD3d 766), although those contentions are without merit. Notwithstanding

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the defendant's contention that the officers chased him even though they lacked a "reasonable suspicion that [he] was involved in a felony or misdemeanor" (*People v Moore*, 6 NY3d 496, 499), the testimony adduced at the suppression hearing reflects that the officers' pursuit of the defendant after he dropped what appeared to be a drug packet and fled their presence immediately thereafter was justified (*see People v Febus*, 11 AD3d 554, 556; *Matter of Steven McC.*, 304 AD2d 68, 73). Moreover, the record does not support the defendant's contention that the officers' testimony at the suppression hearing was incredible or patently tailored to nullify constitutional objections (*see People v Vasquez*, 217 AD2d 466, 467; *cf. People v Rutledge*, 21 AD3d 1125, 1126). Accordingly, the Supreme Court properly denied that branch of the defendant's omnibus motion which was to suppress physical evidence.

The defendant's contention that he was penalized for going to trial rather than accepting a plea offer is without merit (*see People v Davis*, 27 AD3d 761, 762; *People v Evans*, 16 AD3d 595, 596). Additionally, the sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

RIVERA, J.P., BALKIN, HALL and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court