

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

D33026
Y/ct

_____AD3d_____

Submitted - November 7, 2011

REINALDO E. RIVERA, J.P.
JOHN M. LEVENTHAL
ARIEL E. BELEN
SHERI S. ROMAN, JJ.

2009-00810

DECISION & ORDER

The People, etc., respondent,
v Leroy Carter III, appellant.

(Ind. No. 911-08)

Del Atwell, East Hampton, N.Y., for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Thomas Constant of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (Gazzillo, J.), rendered December 15, 2008, convicting him of criminal sale of a controlled substance in the third degree (two counts) 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 contention that the evidence was legally insufficient to establish his guilt beyond a reasonable doubt is unpreserved for appellate review (*see People v Hawkins*, 11 NY3d 484) and, in any event, is without merit. Viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620), we find that it was legally sufficient to establish the defendant's guilt of the crimes charged beyond a reasonable doubt. Moreover, upon our independent review pursuant to CPL 470.15(5), we are satisfied that the verdict was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633). Contrary to the defendant's contention, the People proved that he was not acting as the agent or mere extension of the buyer (*see People v Roche*, 45 NY2d 78, 82-83, *cert denied* 439 US 958; *People v Matos*, 123 AD2d 330, 331). The evidence adduced at trial established that the defendant displayed an independent interest in the sale and his behavior "purposefully affected or furthered the sale of the controlled substance" (*People*

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v Martinez, 289 AD2d 259, 259 [internal quotation marks omitted]; *see People v Roche*, 45 NY2d at 81; *People v Torres*, 150 AD2d 816, 816).

The defendant's contention that the failure of trial counsel to preserve a certain contention for appellate review constituted ineffective assistance of counsel is without merit (*see People v Phillips*, 84 AD3d 1274, 1274-1275; *People v Greenlee*, 70 AD3d 966, 967; *People v Taberas*, 60 AD3d 791, 793).

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

The defendant's remaining contentions are without merit.

RIVERA, J.P., LEVENTHAL, BELEN and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court