

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

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_____AD3d_____

Submitted - June 14, 2012

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
RANDALL T. ENG
JEFFREY A. COHEN, JJ.

2009-10117

DECISION & ORDER

The People, etc., respondent,
v Hector Rivera, appellant.

(Ind. No. 8678/07)

Campos & Wojszwilo, New York, N.Y. (Richard Wojszwilo of counsel), for
appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Shulamit
Rosenblum Nemece, and Jill Oziemblewski of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County
(Dowling, J.), rendered October 20, 2009, convicting him of criminal possession of a weapon in the
second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The trial court has broad discretion to limit cross-examination when questions are
repetitive, irrelevant or only marginally relevant, concern collateral issues, or threaten to mislead the
jury (*see Delaware v Van Arsdall*, 475 US 673, 679; *People v Gaviria*, 67 AD3d 701, 702). The trial
court did not deny the defendant the right to confront the witnesses against him by its decision to
limit his cross-examination of a certain prosecution witness (*see People v Baez*, 59 AD3d 635, 635-
636; *People v Stevens*, 45 AD3d 610, 611).

In order for a defendant to compel production of a confidential informant, the
defendant must demonstrate that the proposed testimony of the informant would tend to be
exculpatory or would create a reasonable doubt as to the reliability of the prosecution's case either
through direct examination or impeachment (*see People v Lesiuk*, 81 NY2d 485, 489; *People v*

Williams, 242 AD2d 917, 918; *People v Perkins*, 227 AD2d 572, 574; *People v Rosa*, 150 AD2d 623, 624). There is no merit to the defendant's contention that the trial court erred in denying his request that the confidential informant be produced. "Bare assertions or conclusory allegations by a defendant that a witness is needed to establish his innocence will not suffice" (*People v Pena*, 37 NY2d 642, 644, quoting *People v Goggins*, 34 NY2d 163, 169, *cert denied* 419 US 1012).

"The right to effective assistance of counsel is guaranteed by the Federal and State Constitutions" (*People v Rivera*, 71 NY2d 705, 708; *see* US Const Sixth Amend; NY Const, art I, § 6; *People v Collado*, 90 AD3d 672, 672). Here, the defendant was not deprived of the effective assistance of counsel under the New York Constitution because, viewing defense counsel's performance in totality, counsel provided meaningful representation (*see People v Benevento*, 91 NY2d 708, 712; *People v Baldi*, 54 NY2d 137, 147; *People v Collado*, 90 AD3d at 673). Further, the defendant was not deprived of the effective assistance of counsel under the United States Constitution (*see Strickland v Washington*, 466 US 668).

RIVERA, J.P., FLORIO, ENG and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court