

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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KA 06-02286

PRESENT: HURLBUTT, J.P., MARTOCHE, SMITH, CENTRA, AND PERADOTTO, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

WILFREDO BRITO, DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (GERALD T. BARTH OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (MATTHEW H. JAMES OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Onondaga County Court (William D. Walsh, J.), rendered January 11, 2006. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a controlled substance in the third degree (two counts) and criminal possession of a controlled substance in the seventh degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of two counts of criminal possession of a controlled substance in the third degree (Penal Law § 220.16 [1], [2]) and one count of criminal possession of a controlled substance in the seventh degree (§ 220.03), defendant contends that his arrest was not based upon probable cause inasmuch as the People failed to satisfy the *Aguilar-Spinelli* test with respect to the citizen informant who provided the relevant information to the police. We reject that contention. "[T]he information provided by an identified citizen accusing another individual of the commission of a specific crime is sufficient to provide the police with probable cause to arrest" (*People v Williams*, 301 AD2d 543, *lv denied* 100 NY2d 589; see *People v Bingham*, 263 AD2d 611, 612, *lv denied* 93 NY2d 1014). The reliability and veracity of an identified citizen is presumed, particularly in light of "the criminal sanctions attendant upon falsely reporting . . . information to the authorities" (*People v Chipp*, 75 NY2d 327, 340, *cert denied* 498 US 833). Furthermore, the statement by the identified citizen informant that was against the informant's "own penal interest constituted reliable information for the purposes of supplying probable cause" (*People v Riggins*, 161 AD2d 813, 814, *lv denied* 76 NY2d 851, 863). We accord great deference to the determination of County Court crediting the testimony of the police officer concerning the information provided by the citizen informant (*see generally*

People v Prochillo, 41 NY2d 759, 761).

We have considered defendant's remaining contentions and conclude that they are without merit.

Entered: February 6, 2009

JoAnn M. Wahl
Clerk of the Court