



## PEOPLE STATE NEW YORK v. RAMON ELIGIOS

550 N.Y.S.2d 661 (1990) | Cited 0 times | New York Supreme Court | February 1, 1990

Judgment, Supreme Court, New York County (Rena Uviller, J.), rendered November 13, 1987, which convicted defendant, after a jury trial, of criminal possession of a controlled substance in the second and seventh degrees and two counts of criminal sale of a controlled substance in the third degree, and sentenced him to concurrent indeterminate prison terms of from three years to life on the second degree possession count and from 2 to 6 years on the two sale counts, and to a one-year term on the seventh degree possession count, is unanimously affirmed.

Defendant was found guilty of possession and sale of a controlled substance arising out of two sales of cocaine to an undercover officer in an apartment. His defense at trial was that the seller of the drugs was another person who was not apprehended. The arresting officers testified that no other person fitting defendant's description and attire was present in the apartment, and thereby directly challenged his mistaken identification defense and placed the issue squarely for the jury's determination. We find no reason to disturb the jury's finding adverse to defendant on this issue. Defendant's contention that the trial court's charge on identification was inadequate because it failed to instruct the jury that the People must prove identity beyond a reasonable doubt (citing *People v Whalen*, 59 N.Y.2d 273) was not preserved for appellate review as no objection was made at trial (CPL 470.05). In any event, since the question of defendant's guilt hinged largely upon the credibility of the undercover officer's testimony, and not upon the nature and quality of his observations of defendant, as such, the charge on the issue of identification, as given, was adequate (*People v Blake*, 124 A.D.2d 666).

