

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

1167

KA 06-03422

PRESENT: MARTOCHE, J.P., CENTRA, FAHEY, PERADOTTO, AND GREEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DAVID A. WITHERSPOON, DEFENDANT-APPELLANT.
(APPEAL NO. 2.)

JOSEPH T. JARZEMBEK, BUFFALO, FOR DEFENDANT-APPELLANT.

THOMAS E. MORAN, DISTRICT ATTORNEY, GENESEO (ERIC R. SCHIENER OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Livingston County Court (Joan S. Kohout, A.J.), rendered July 11, 2006. The judgment convicted defendant, upon a jury verdict, of criminal sale of a controlled substance in the fifth degree.

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

Same Memorandum as in *People v Witherspoon* ([appeal No. 1] ____ AD3d ____ [Oct. 2, 2009]).

Entered: October 2, 2009

Patricia L. Morgan
Clerk of the Court