

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

1309

KA 10-00820

PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, LINDLEY, AND SCONIERS, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ELIO P. TILLAN, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JAMES ECKERT OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (STEPHEN X. O'BRIEN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Patricia D. Marks, J.), rendered November 23, 2009. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a controlled substance in the first degree, criminal possession of a controlled substance in the third degree (three counts) and criminally using drug paraphernalia in the second degree (four counts).

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

Memorandum: Defendant appeals from a judgment convicting him, upon his plea of guilty, of, inter alia, criminal possession of a controlled substance in the first degree (Penal Law § 220.21 [1]). We reject defendant's contention that County Court erred in refusing to suppress evidence obtained through the use of an eavesdropping warrant. The warrant application established probable cause for the issuance of the warrant, and contained a sufficient showing that normal investigative procedures had been tried and had failed or reasonably appeared to be unlikely to succeed (*see* CPL 700.15 [1], [4]; *People v Lazo*, 16 AD3d 1153, 1153-1154, *lv denied* 4 NY3d 887; *People v Truver*, 244 AD2d 990, 991).

Entered: February 6, 2015

Frances E. Cafarell
Clerk of the Court