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This memorandum is uncorrected and subject to revision before  
publication in the New York Reports.

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No. 18  
The People &c.,  
Respondent,  
v.  
Norman Whitehead, Jr., &c.,  
Appellant.

Matthew C. Hug, for appellant.  
Lisa E. Fleischmann, for respondent.

MEMORANDUM:

The order of the Appellate Division, insofar as  
appealed from, should be affirmed.

We reject defendant's claim that the evidence was not  
legally sufficient to support his convictions. Although the  
People did not recover or introduce any of the cocaine that

defendant was charged with possessing, "direct evidence in the form of contraband or other physical evidence is not the only adequate proof" (People v Samuels, 99 NY2d 20, 24 [2002]). The People presented sufficient evidence in the form of, among other things, defendant's intercepted phone calls replete with drug-related conversations, visual surveillance, and the testimony of cooperating witnesses. Defendant's remaining legal sufficiency claims, including his challenge to the People's proof concerning the weight of the drugs, are unpreserved.

We also reject defendant's challenge to the People's limited remarks during their opening statement regarding the Penal Law definition of "[s]ell" (Penal Law § 220.00 [1]). The People did not misstate the law and, as the trial court reasoned, the unique facts of this case -- involving "an agreement" to sell rather than "an actual transaction" -- did not conform to the conventional meaning of a "sale." Moreover, both the People and the trial judge explained that the court -- not the attorneys -- would instruct the jury on the law. The court therefore did not abuse its discretion by permitting the comments.

Defendant's challenge to the People's summation is unpreserved, and his claims concerning the grand jury and jury charge are without merit. As to defendant's remaining claims, we agree with the Appellate Division that, to the extent they are preserved, defendant's claims are without merit.

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Order, insofar as appealed from, affirmed, in a memorandum.  
Chief Judge DiFiore and Judges Rivera, Abdus-Salaam, Stein,  
Fahey, Garcia and Wilson concur.

Decided March 28, 2017