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No. 106 SSM 6
The People &c.,
Respondent,
v.
Donald France,
Appellant.

Submitted by Kristina Schwarz, for appellant.
Submitted by Susan Axelrod, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed.

Under CPL 710.60 (1), a defendant is entitled to a hearing on a suppression motion only if there is an issue of fact that must be resolved before it can be determined whether suppression is required. Here, evaluating (1) the face of the

pleadings, (2) the context of the motion, and (3) the defendant's access to information (see People v Mendoza, 82 NY2d 415, 426 [1993]; see also People v Lopez, 5 NY3d 753, 754 [2005]), the motion was properly denied without a hearing. Despite having sufficient information from the felony complaint and the voluntary disclosure form concerning the factual predicate for his arrest, defendant failed to dispute that the victim told the police that he had been robbed by defendant, that the victim identified him to the police and that defendant admitted possessing a pawnshop receipt for the stolen goods (cf. People v Bryant, 8 NY3d 530 [2007]). These uncontested facts provide support for the Appellate Division's conclusion that there was probable cause for the arrest, and thus the Appellate Division correctly concluded that a hearing was unnecessary.

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On review of submissions pursuant to section 500.11 of the Rules, order affirmed, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided April 2, 2009