

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D23887
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_____AD3d_____

Submitted - June 19, 2009

WILLIAM F. MASTRO, J.P.
FRED T. SANTUCCI
RANDALL T. ENG
PLUMMER E. LOTT, JJ.

2005-09447

DECISION & ORDER

The People, etc., respondent,
v Philip Williams, appellant.

(Ind. No. 1109/04)

Lynn W. L. Fahey, New York, N.Y. (John Gemmill of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Howard B. Goodman, and Marie John-Drigo of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Ingram, J.), rendered September 1, 2005, convicting him of operating a motor vehicle while under the influence of alcohol, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that certain statements made by the prosecutor during summation deprived him of a fair trial is unpreserved for appellate review (*see* CPL 470.05; *People v Molinaro*, 62 AD3d 724; *People v Brown*, 60 AD3d 962). In any event, the challenged comments constituted fair comment on the evidence (*see People v Ashwal*, 39 NY2d 105, 109), were responsive to the arguments presented in defense counsel's summation (*see People v Galloway*, 54 NY2d 396, 400-401), or were harmless (*see People v Crimmins*, 36 NY2d 230, 239).

July 28, 2009

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The defendant's contention that the prosecutor violated the court's *Sandoval* ruling (see *People v Sandoval*, 34 NY2d 371) is unpreserved for appellate review and, in any event, is without merit.

MASTRO, J.P., SANTUCCI, ENG and LOTT, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court