

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

D24517
C/prt

_____AD3d_____

Argued - September 8, 2009

ROBERT A. SPOLZINO, J.P.
HOWARD MILLER
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON, JJ.

2006-04989

DECISION & ORDER

The People, etc., respondent,
v Michael J. McKenna, appellant.

(Ind. No. 135/05)

David Goodman, Poughkeepsie, N.Y. (Steven Levine of counsel), for appellant, and appellant pro se.

William V. Grady, District Attorney, Poughkeepsie, N.Y. (Kirsten A. Rappleyea and Bridget Rahilly Steller of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Dutchess County (Dolan, J.), rendered April 20, 2006, convicting him of operating a motor vehicle while under the influence of alcohol, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, without a hearing, of that branch of the defendant's omnibus motion which was to suppress physical evidence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the County Court properly denied, without a hearing, that branch of his omnibus motion which was to suppress physical evidence, since his allegations were insufficient to support his claim that the police lacked probable cause to arrest him (*see* CPL 710.60[1]; *People v Mendoza*, 82 NY2d 415, 426; *People v Bryant*, 8 NY3d 530, 533; *People v Montero*, 44 AD3d 796).

The defendant's claim of legal insufficiency is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Hawkins*, 11 NY3d 484). In any event, viewing the evidence in the light

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most favorable to the prosecution (*see People v Contes*, 60 NY2d 620), we find that it was legally sufficient to establish the defendant's guilt beyond a reasonable doubt.

In fulfilling our responsibility to conduct an independent review of the weight of the evidence (*see* CPL 470.15[5]; *People v Danielson*, 9 NY3d 342), we nevertheless accord great deference to the jury's opportunity to view the witnesses, hear the testimony, and observe demeanor (*see People v Mateo*, 2 NY3d 383, *cert denied* 542 US 946; *People v Bleakley*, 69 NY2d 490, 495). Upon reviewing the record here, we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

The defendant's trial attorney provided meaningful representation (*see People v Benevento*, 91 NY2d 708; *People v Baldi*, 54 NY2d 137).

The defendant's remaining contentions, including those raised in his supplemental pro se brief, are unpreserved for appellate review and, in any event, are without merit.

SPOLZINO, J.P., MILLER, ANGIOLILLO and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court