

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

D26224  
Y/hu

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - January 22, 2010

FRED T. SANTUCCI, J.P.  
THOMAS A. DICKERSON  
CHERYL E. CHAMBERS  
SANDRA L. SGROI, JJ.

---

2006-09072

DECISION & ORDER

The People, etc., respondent,  
v Martin Batista, appellant.

(Ind. No. 1888/05)

---

Lynn W. L. Fahey, New York, N.Y. (Arnold & Porter LLP [Monique A. Gaylor], of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Nicoletta J. Caferri, and Rebecca Height of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Knopf, J.), rendered August 17, 2006, convicting him of operating a motor vehicle under the influence of alcohol, unlawfully operating or driving a motor vehicle on a public highway, and unlawful possession of marijuana, upon a jury verdict, and imposing sentence.

ORDERED that judgment is affirmed.

The defendant correctly contends that a police officer's testimony before a grand jury included impermissible hearsay that the complaining witness reported that the defendant operated the car which crashed into her car. However, in light of the remaining admissible circumstantial evidence that the defendant operated the car, the improper comment did not impair the integrity of the grand jury proceeding or lead to the possibility of prejudice against the defendant (*see People v Huston*, 88 NY2d 400; *People v Smith*, 289 AD2d 597). Moreover, the Supreme Court's denial of the

March 9, 2010

Page 1.

PEOPLE v BATISTA, MARTIN

defendant's motion for a missing witness charge was not an improvident exercise of discretion (*see People v Savinon*, 100 NY2d 192, 197; *People v Kitching*, 78 NY2d 532, 536; *People v Gonzalez*, 68 NY2d 424).

SANTUCCI, J.P., DICKERSON, CHAMBERS and SGROI, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court