

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

D28050
H/kmg

_____AD3d_____

Submitted - June 4, 2010

REINALDO E. RIVERA, J.P.
JOSEPH COVELLO
RUTH C. BALKIN
L. PRISCILLA HALL, JJ.

2008-06828

DECISION & ORDER

The People, etc., respondent,
v Peter D. Young, appellant.

(Ind. No. 786/07)

Robert C. Mitchell, Riverhead, N.Y. (Robert B. Kenney of counsel), for appellant,
and appellant pro se.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Michael Blakey of counsel), for
respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County
(Gazzillo, J.), rendered July 1, 2008, convicting him of operating a motor vehicle while under the
influence of alcohol and aggravated unlicensed operation of a motor vehicle in the first degree, upon
a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the evidence was legally insufficient to establish his
guilt of operating a motor vehicle while under the influence of alcohol 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 most favorable to the prosecution (*see People v Contes*, 60 NY2d 620, 621), we find that
it was legally sufficient to establish the defendant's guilt beyond a reasonable doubt (*see People v*
Milo, 300 AD2d 680; *People v Donhauser*, 255 AD2d 933; *People v Gangale*, 249 AD2d 413).
Moreover, upon our independent review pursuant to CPL 470.15(5), we are satisfied that the verdict
of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

June 29, 2010

PEOPLE v YOUNG, PETER D.

Page 1.

The defendant's contention that he was deprived of a fair trial by certain remarks made by the prosecutor during summation is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Charles*, 57 AD3d 556; *People v Gill*, 54 AD3d 965, 966; *People v Robbins*, 48 AD3d 711). In any event, the challenged remarks were fair comment on the evidence, permissible rhetorical comment, or responsive to the defense counsel's summation (*see People v Ashwal*, 39 NY2d 105, 109-110).

Likewise, the defendant failed to preserve his contention that the trial court committed reversible error when it failed to instruct the jury on the lesser-included offense of driving while ability impaired (*see* Vehicle and Traffic Law § 1192[1]; CPL 470.05[2]; *People v Borrello*, 52 NY2d 952, 953). In any event, the defendant's contention is without merit (*see* CPL 300.50[2]; *People v Morusma*, 45 AD3d 253).

The defendant received the effective assistance of counsel (*see People v Benevento*, 91 NY2d 708, 713-714; *People v Baldi*, 54 NY2d 137).

The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80, 83).

The defendant's remaining contentions, raised in his supplemental pro se brief, are without merit.

RIVERA, J.P., COVELLO, BALKIN and HALL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court