

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

D36472
W/ct

_____AD3d_____

Argued - October 5, 2012

DANIEL D. ANGIOLILLO, J.P.
LEONARD B. AUSTIN
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2011-07596

DECISION & ORDER

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

(Ind. No. 10-01360)

John R. Lewis, Sleepy Hollow, N.Y., for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (Jennifer Spencer, Steven A. Bender, and Richard Longworth Hecht of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Westchester County (Lorenzo, J.), rendered July 6, 2011, convicting him of driving while intoxicated, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The introduction of testimony regarding the results of a field breathalyzer test performed on the defendant did not constitute reversible error, because this testimony was elicited after defense counsel opened the door to the matter during opening statements and cross-examination (*see People v Melendez*, 55 NY2d 445, 451-453; *People v Vines*, 51 AD3d 827; *People v Joyner*, 295 AD2d 625). Moreover, any potential prejudice to the defendant was alleviated by the trial court's limiting instructions to the jury (*see People v Vines*, 51 AD3d 827; *People v Hernandez*, 11 AD3d 479, 782 NYS2d 776; *People v Joyner*, 295 AD2d at 625).

ANGIOLILLO, J.P., AUSTIN, SGROI and MILLER, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court

November 21, 2012

PEOPLE v MARTIN, RICHARD