

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1049

KA 07-02441

PRESENT: SMITH, J.P., CENTRA, FAHEY, CARNI, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

HENRY J. JAROCHA, DEFENDANT-APPELLANT.

JOHN E. TYO, SHORTSVILLE, FOR DEFENDANT-APPELLANT.

R. MICHAEL TANTILLO, DISTRICT ATTORNEY, CANANDAIGUA (JEFFREY L. TAYLOR OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Ontario County Court (Frederick G. Reed, J.), rendered October 19, 2007. The judgment convicted defendant, upon a jury verdict, of felony driving while intoxicated (two counts) and aggravated unlicensed operation of a motor vehicle in the first degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him following a jury trial of one count of aggravated unlicensed operation of a motor vehicle in the first degree (Vehicle and Traffic Law § 511 [3]) and two counts of felony driving while intoxicated (§ 1192 [2], [3]; § 1193 [1] [c] [former (ii)]). We reject defendant's contention that the evidence is legally insufficient to support the conviction of aggravated unlicensed operation of a motor vehicle (*see generally People v Bleakley*, 69 NY2d 490, 495). Contrary to defendant's contention, the People presented the order of suspension and revocation with defendant's signature and thus established that defendant knew or had reason to know that his license had been revoked (*see People v Crandall*, 199 AD2d 867, 869, *lv denied* 83 NY2d 803). Also, viewing the evidence in light of the elements of the two counts of felony driving while intoxicated as charged to the jury (*see People v Danielson*, 9 NY3d 342, 349), we conclude that the verdict with respect to those counts is not against the weight of the evidence (*see generally Bleakley*, 69 NY2d at 495).

Finally, we conclude that County Court did not abuse its discretion in denying defendant's motion for substitution of counsel on the day on which jury selection was scheduled to begin (*see People v Cunningham*, 12 AD3d 1131, 1132, *lv denied* 4 NY3d 829, 5 NY3d 761; *People v Gloster*, 175 AD2d 258, 259, *lv denied* 78 NY2d 1011; *People v*

Terry, 115 AD2d 130, *lv denied* 67 NY2d 890).

Entered: October 2, 2009

Patricia L. Morgan
Clerk of the Court