

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

153

KA 10-01684

PRESENT: SMITH, J.P., CARNI, SCONIERS, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JAMES ADAMS, DEFENDANT-APPELLANT.

D.J. & J.A. CIRANDO, ESQS., SYRACUSE (JOHN A. CIRANDO OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (BRENTON P. DADEY OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Onondaga County (John J. Brunetti, A.J.), rendered August 3, 2009. The judgment convicted defendant, upon a jury verdict, of aggravated driving while intoxicated and driving while intoxicated.

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

Memorandum: Defendant appeals from a judgment convicting him after a jury trial of aggravated driving while intoxicated (Vehicle and Traffic Law § 1192 [2-a]) and driving while intoxicated (§ 1192 [3]). Defendant contends that his discovery rights were violated based on the People's failure to retain a videotape of the stop. We reject that contention. The issue concerning the alleged existence of a videotape of the stop was contested at trial and thus presented an issue of credibility for the jury (*see People v Smith*, 73 AD3d 1469, 1470, *lv denied* 15 NY3d 778), and Supreme Court granted defendant's request for an adverse inference charge with respect to the alleged videotape in the event that the jury credited defendant's version that there was in fact such a videotape (*see People v Safford*, 74 AD3d 1835, 1836-1837).

Also contrary to defendant's contention, the court properly refused to suppress any evidence resulting from the traffic stop inasmuch as the stop was based on probable cause (*see People v Wright*, 42 AD3d 942, 942-943, *lv denied* 9 NY3d 1011). We have reviewed defendant's remaining contentions and conclude that they are without merit.

Entered: February 18, 2011

Patricia L. Morgan
Clerk of the Court