

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

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KA 09-02358

PRESENT: SMITH, J.P., CARNI, LINDLEY, SCONIERS, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ARTHUR R. POBLACKI, DEFENDANT-APPELLANT.

LOTEMPPIO & BROWN, P.C., BUFFALO (FRANK L. LOTEMPPIO, JR., OF COUNSEL),
FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (MICHELLE L.
CIANCIOSA OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Michael L. D'Amico, J.), rendered May 8, 2009. The judgment convicted defendant, after a nonjury trial, of felony driving while intoxicated, speeding, and resisting arrest.

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

Memorandum: Defendant appeals from a judgment convicting him following a nonjury trial of felony driving while intoxicated (Vehicle and Traffic Law § 1192 [3]; § 1193 [1] [c] [former (i)]), speeding (§ 1180 [d]), and resisting arrest (Penal Law § 205.30). Defendant failed to preserve for our review his contention that the evidence is not legally sufficient to support the conviction of driving while intoxicated and resisting arrest because his motion for a trial order of dismissal with respect to those counts "was not specifically directed at the ground advanced on appeal" (*People v Vassar*, 30 AD3d 1051, 1052, *lv denied* 7 NY3d 796; *see People v Hawkins*, 11 NY3d 484, 491-493; *People v Gray*, 86 NY2d 10, 19). In any event, we reject that contention. Furthermore, viewing the evidence in light of the elements of the crime of driving while intoxicated in this nonjury trial (*see People v Danielson*, 9 NY3d 342, 349), we conclude that the verdict with respect thereto is not against the weight of the evidence (*see generally People v Bleakley*, 69 NY2d 490, 495).

Entered: April 30, 2010

Patricia L. Morgan
Clerk of the Court