

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

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KA 17-00564

PRESENT: PERADOTTO, J.P., DEJOSEPH, NEMOYER, AND CURRAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TERRY L. CHAMPION, DEFENDANT-APPELLANT.

ROSEMARIE RICHARDS, GILBERTSVILLE, FOR DEFENDANT-APPELLANT.

BROOKS T. BAKER, DISTRICT ATTORNEY, BATH (JOHN C. TUNNEY OF COUNSEL),
FOR RESPONDENT.

Appeal from a judgment of the Steuben County Court (Marianne Furfure, A.J.), rendered January 17, 2017. The judgment convicted defendant, upon a jury verdict, of driving while ability impaired by drugs.

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

Memorandum: Defendant appeals from a judgment convicting him, upon a jury verdict, of driving while ability impaired by drugs (Vehicle and Traffic Law § 1192 [4]). Upon our independent review of the evidence in light of the elements of the crime as charged to the jury (see *People v Kancharla*, 23 NY3d 294, 302-303 [2014]; *People v Danielson*, 9 NY3d 342, 349 [2007]; see generally *People v Sanchez*, 32 NY3d 1021, 1023 [2018]), we conclude that an acquittal would have been unreasonable (see *People v President*, 59 Misc 3d 134[A], 2018 NY Slip Op 50488[U], *1-2 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2018], *lv denied* 31 NY3d 1120 [2018]; see also *People v Whitehead*, 119 AD3d 1080, 1081 [3d Dept 2014], *lv denied* 24 NY3d 1048 [2014]). The verdict is thus not against the weight of the evidence (see generally *People v Wheeler*, 159 AD3d 1138, 1140 [3d Dept 2018], *lv denied* 31 NY3d 1123 [2018]).

We reject defendant's contention that, during the traffic stop preceding his arrest, the police were not authorized under *People v De Bour* (40 NY2d 210 [1976]) to ask him whether he possessed anything dangerous or illegal, and that County Court should have therefore suppressed his incriminatory response to that question. Defendant concedes that police had at least reasonable suspicion that he was driving while intoxicated and/or ability impaired before asking the question that prompted his inculpatory admission and, "given the existence of reasonable suspicion, the [police] necessarily possessed the lesser founded suspicion of criminality, giving them the

common-law right to inquire whether defendant had anything illegal" (*People v Cavanagh*, 97 AD3d 980, 981 [3d Dept 2012], *lv denied* 19 NY3d 1101 [2012]). Contrary to defendant's further contention, the court properly refused to suppress the results of his field sobriety and chemical blood tests on *Miranda* grounds given that "*Miranda* warnings are not required to allow the results of [such] tests into evidence" (*People v Berg*, 92 NY2d 701, 703 [1999]).

Defendant's remaining contention is not preserved for our review, and we decline to exercise our power to address it as a matter of discretion in the interest of justice (see CPL 470.15 [6] [a]).

Entered: April 26, 2019

Mark W. Bennett
Clerk of the Court