

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

1379

KA 06-03659

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

NATHANIEL WILLIAMS, DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (MARY P. DAVISON OF COUNSEL), FOR DEFENDANT-APPELLANT.

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

Appeal from a judgment of the Onondaga County Court (William D. Walsh, J.), rendered November 21, 2006. The judgment convicted defendant, upon a jury verdict, of unauthorized use of a vehicle in the second degree.

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 unauthorized use of a vehicle in the second degree (Penal Law § 165.06). Contrary to the contention of defendant, County Court did not abuse its discretion in denying his request for an adjournment to enable him to procure a witness (*see People v Moore*, 41 AD3d 1149, 1151, *lv denied* 9 NY3d 879, 992). Defendant failed to preserve for our review his further contention that he was denied a fair trial based on prosecutorial misconduct (*see* CPL 470.05 [2]). In any event, that contention lacks merit inasmuch as the alleged misconduct was not so egregious as to deprive defendant of a fair trial (*see People v Shaw*, ___ AD3d ___ [Oct. 2, 2009]; *see also People v Brent-Pridgen*, 48 AD3d 1054, 1055, *lv denied* 10 NY3d 860).

Entered: November 13, 2009

Patricia L. Morgan
Clerk of the Court