

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

**377**

**KA 09-02046**

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

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DAVID MANUEL, DEFENDANT-APPELLANT.

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SHAW & SHAW P.C., HAMBURG (CHRISTOPHER M. PANNOZZO OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (DOUGLAS A. GOERSS OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Erie County Court (Sheila A. DiTullio, J.), rendered June 7, 2007. The judgment convicted defendant, upon a nonjury verdict, of assault in the second degree (two counts).

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

Memorandum: On appeal from a judgment convicting him upon a nonjury verdict of two counts of assault in the second degree (Penal Law § 120.05 [3]), defendant contends that the conviction is not supported by legally sufficient evidence because the officers were not engaged in a lawful duty when they were injured. By failing to move for a trial order of dismissal on that ground, defendant failed to preserve his contention for our review (*see People v Gray*, 86 NY2d 10, 19; *People v Townsley*, 50 AD3d 1610, 1611, *lv denied* 11 NY3d 742). Contrary to defendant's further contention, viewing the evidence in light of the elements of the crimes in this nonjury trial (*see People v Danielson*, 9 NY3d 342, 349), we conclude that the verdict is not against the weight of the evidence (*see generally People v Bleakley*, 69 NY2d 490, 495). We have reviewed defendant's remaining contention and conclude that it is without merit.

Entered: March 19, 2010

Patricia L. Morgan  
Clerk of the Court