Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D13736
W/cb

_____AD3d_____ Argued - November 30, 2006

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
STEVEN W. FISHER
MARK C. DILLON, JJ.

1999-07237
2005-11674 DECISION & ORDER

The People, etc., respondent,
v Steven Fleurant, appellant.

(Ind. No. 1901N-98)

Joel R. Rudin, New York, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Peter A. Weinstein and Judith R. Sternberg of counsel), for respondent.

Appeals by the defendant (1) from a judgment of the County Court, Nassau County (Kowtna, J.), rendered July 2, 1999, convicting him of murder in the second degree, upon a jury verdict, and imposing sentence, and (2), by permission, from an order of the same court (Sullivan, J.) entered November 22, 2005, which, without a hearing, denied the defendant's motion pursuant to CPL 440.10 to vacate the judgment of conviction.

ORDERED that the appeal from the order is dismissed as academic in light of our determination on the appeal from the judgment; and it is further,

ORDERED that the judgment is reversed, on the law, the indictment is dismissed, the order is vacated, and the matter is remitted to the County Court, Nassau County, for the purpose of entering an order in its discretion pursuant to CPL 160.50.

The defendant's contention that the evidence was legally insufficient to support his conviction of depraved indifference murder was adequately preserved on the record. Viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620, 621), we find that it was legally insufficient to establish that the defendant "recklessly" caused the victim's death (*see* Penal Law § 125.25[2]; *People v Payne*, 3 NY3d 266, 270; *People v Gonzalez*, 1 NY3d 464, 466-467; *People v Hafeez*, 100 NY2d 253, 258-259; *People v Bennett*, 13 AD3d 384, 385). The remainder of the defendant's contentions have been rendered academic in light of our determination.

MASTRO, J.P., FLORIO, FISHER and DILLON, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court