

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

D25574  
Y/kmg

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Submitted - November 20, 2009

STEVEN W. FISHER, J.P.  
DANIEL D. ANGIOLILLO  
THOMAS A. DICKERSON  
JOHN M. LEVENTHAL, JJ.

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2007-02009

DECISION & ORDER

The People, etc., respondent,  
v Vasily Kuz, appellant.

(Ind. No. 5528/05)

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Lynn W. L. Fahey, New York, N.Y. (Jonathan M. Kratter of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Camille O'Hara Gillespie, and Bruce Alderman of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Marrus, J.), rendered February 5, 2007, convicting him of assault in the first degree and assault in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that, with respect to the count charging assault in the first degree, the Supreme Court's erroneous definition of serious physical injury (*see* Penal Law § 10.00[10]; *People v Pittman*, 33 AD3d 1118, 1119–1120; *cf.* CJI2d[NY] Penal Law § 120.10[1]), deprived him of a fair trial (*see* CPL 470.15[6][a]). We find that the charge did not deprive the defendant of a fair trial, and we decline to disturb the conviction in the exercise of our interest of justice jurisdiction (*see* CPL 470.15[3][c]; *People v Malloy*, 177 AD2d 511, 512).

FISHER, J.P., ANGIOLILLO, DICKERSON and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

January 5, 2010

PEOPLE v KUZ, VASITILY