

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

D36360
O/nl

_____AD3d_____

Argued - September 24, 2012

MARK C. DILLON, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
L. PRISCILLA HALL, JJ.

2010-11159

DECISION & ORDER

The People, etc., respondent,
v Michael Bohan, appellant.

(Ind. No. 2163/08)

Lynn W. L. Fahey, New York, N.Y. (DeNice Powell of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Nicoletta J. Caferri, and Laura T. Ross of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Buchter, J.), rendered November 1, 2010, convicting him of murder in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the Supreme Court properly exercised its discretion in determining that the challenged portions of his oral and written statements to the police had probative value. The subject statements showed not merely a propensity for criminal conduct, but consciousness of guilt (*see People v Holden*, 82 AD3d 1007, 1007-1008; *People v Johnson*, 61 AD3d 892, 893; *People v Currus*, 266 AD2d 468).

The defendant correctly contends that the Supreme Court erred in admitting tape recordings of 911 emergency calls into evidence under the present sense impression exception to the hearsay rule. However, the error in admitting the 911 tapes into evidence was harmless, as there was overwhelming evidence of the defendant's guilt and no significant probability that the jury would have acquitted the defendant were it not for the error (*see People v Kello*, 96 NY2d 740, 743-744;

People v Crimmins, 36 NY2d 230, 241-242; *People v Ortiz*, 33 AD3d 1044, 1045).

The defendant's remaining contention is without merit.

DILLON, J.P., BALKIN, LEVENTHAL and HALL, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court