

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

D36781
C/kmb

_____AD3d_____

Submitted - October 9, 2012

PETER B. SKELOS, J.P.
ANITA R. FLORIO
L. PRISCILLA HALL
SHERI S. ROMAN, JJ.

2009-03513

DECISION & ORDER

The People, etc., respondent,
v Robert Anderson, appellant.

(Ind. No. 1669/07)

Alexander M. Dudelson, Brooklyn, N.Y., for appellant.

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Michael J. Miller of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Suffolk County (Hudson, J.), rendered March 20, 2009, convicting him of murder in the second degree and criminal contempt in the first degree, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing, of those branches of the defendant's omnibus motion which were to suppress physical evidence and his statements to law enforcement officials.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the People established at the suppression hearing that the police had probable cause to arrest him, based on information provided by a witness (*see People v Nealy*, 32 AD3d 400, 401; *People v Banks*, 208 AD2d 759, 759-760).

The County Court correctly denied the defendant's request to charge manslaughter in the first degree and manslaughter in the second degree as lesser-included offenses of murder in the second degree. Viewing the evidence in the light most favorable to the defendant (*see People v Martin*, 59 NY2d 704), we find that there was no reasonable view of the evidence to support a finding that he intended to cause serious physical injury to the victim rather than kill her (*see Penal Law § 125.20[1]*; *People v Butler*, 84 NY2d 627, 633-634; *People v Sostre*, 70 AD3d 865), or that he acted recklessly in repeatedly shooting the victim (*see Penal Law § 125.15[1]*; *People v Walston*,

December 19, 2012

Page 1.

PEOPLE v ANDERSON, ROBERT

97 AD3d 609, 610; *People v Spina*, 275 AD2d 902, 904; *People v Etienne*, 250 AD2d 776).

Furthermore, the County Court properly refused to charge the affirmative defense of extreme emotional disturbance. The defendant's behavior "'immediately before and after the killing was inconsistent with the loss of control associated with the affirmative defense'" (*People v Trovato*, 68 AD3d 1023, 1024, quoting *People v Murden*, 190 AD2d 822, 822; see *People v Lynch*, 92 AD3d 805, 806). The defendant failed to establish both the subjective and objective elements of the defense of extreme emotional disturbance (see *People v Smith*, 1 NY3d 610, 612; *People v Roche*, 98 NY2d 70, 75-77; *People v Trovato*, 68 AD3d at 1024).

SKELOS, J.P., FLORIO, HALL and ROMAN, JJ., concur.

ENTER:

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

Aprilanne Agostino
Clerk of the Court