

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

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KA 07-01573

PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

THERESA M. VARGAS, DEFENDANT-APPELLANT.

REDMOND & PARRINELLO, LLP, ROCHESTER (BRUCE F. FREEMAN OF COUNSEL),
FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (NANCY A. GILLIGAN OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Frank P. Geraci, Jr., J.), rendered June 28, 2006. The judgment convicted defendant, after a nonjury trial, of manslaughter in the first degree.

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

Memorandum: On appeal from a judgment convicting her following a nonjury trial of manslaughter in the first degree (Penal Law § 125.20 [1]), defendant contends that the evidence establishing that she acted in self-defense was uncontroverted and thus that reversal is required. We reject that contention. The written statement of defendant to the police contradicted her trial testimony with respect to the justification defense, and County Court was entitled to reject defendant's justification defense based on that written statement (see generally *People v Dlugash*, 41 NY2d 725, 736; *People v Kopp*, 33 AD3d 153, 158, lv denied 7 NY3d 849, cert denied 549 US 1227). Viewing the evidence in light of the elements of the crime 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: February 11, 2010

Patricia L. Morgan
Clerk of the Court