

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

958

KA 07-01866

PRESENT: SMITH, J.P., FAHEY, SCONIERS, PINE, AND GORSKI, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

LYNN HENDERSON, DEFENDANT-APPELLANT.

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TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (GRAZINA MYERS OF COUNSEL), FOR DEFENDANT-APPELLANT.

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

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Appeal from a judgment of the Monroe County Court (John R. Schwartz, A.J.), rendered July 31, 2007. The judgment convicted defendant, upon a jury verdict, of burglary in the first degree and assault in the second degree (two counts).

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

Memorandum: Defendant appeals from a judgment convicting him, upon a jury verdict, of one count of burglary in the first degree (Penal Law § 140.30 [2]) and two counts of assault in the second degree (§ 120.05 [2]). Contrary to defendant's contention with respect to count three of the indictment, we conclude that the evidence is legally sufficient to establish that the victim sustained a physical injury (*see* § 10.00 [9]; § 120.05 [2]; *People v Chiddick*, 8 NY3d 445, 447-448). The evidence presented at trial established that defendant struck the victim repeatedly with a baseball bat, resulting in an injury to the victim's arm that caused the victim "more than slight or trivial pain" (*Chiddick*, 8 NY3d at 447). We further conclude that, when defendant moved for substitution of counsel, County Court made the requisite inquiry to determine whether defendant had good cause for substitution (*see People v Frayer*, 215 AD2d 862, 862-863, *lv denied* 86 NY2d 794). The record establishes that "the court afforded defendant the opportunity to express his objections concerning his . . . attorney, and the court thereafter reasonably concluded that defendant's . . . objections had no merit or substance" (*People v Singletary*, 63 AD3d 1654, *lv denied* 13 NY3d 839 [internal quotation marks omitted]; *see People v Reese*, 23 AD3d 1034, 1035, *lv denied* 6 NY3d 779).

Entered: October 1, 2010

Patricia L. Morgan  
Clerk of the Court