

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

873

KA 09-00175

PRESENT: CENTRA, J.P., FAHEY, LINDLEY, SCONIERS, AND WHALEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

BERNARD DASHER, ALSO KNOWN AS WILLIAM DASHER,
DEFENDANT-APPELLANT.

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

BERNARD DASHER, DEFENDANT-APPELLANT PRO SE.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (STEPHEN X. O'BRIEN OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Joseph D. Valentino, J.), rendered January 9, 2009. The judgment convicted defendant, upon a jury verdict, of murder in the second degree and criminal possession of a weapon 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 murder in the second degree (Penal Law § 125.25 [1]) and two counts of criminal possession of a weapon in the second degree (§ 265.03 [1] [b]; [3]). We reject defendant's contention that Supreme Court erred in refusing to suppress his statements to the police. The evidence presented at the suppression hearing supports the court's determination that defendant knowingly, voluntarily and intelligently waived his *Miranda* rights. Contrary to defendant's contention, the record of the suppression hearing does not establish that he was under the influence of medication at the time he waived those rights "to the degree of mania, or of being unable to understand the meaning of his statements" (*People v Schompert*, 19 NY2d 300, 305, cert denied 389 US 874; see *People v Peterkin*, 89 AD3d 1455, 1455, lv denied 18 NY3d 885; *People v Marvin*, 68 AD3d 1729, 1729, lv denied 14 NY3d 842). We reject defendant's contention that medically-induced intoxication requires application of the police-induced intoxication rule set forth in *Schompert* (19 NY2d at 305-307), and instead conclude that medically-induced intoxication should be evaluated under the self-intoxication standard referenced above (see *id.*; see also *People v Adams*, 26 NY2d 129, 137, cert denied 399 US 931). Contrary to the

contention of defendant in his pro se supplemental brief, we conclude that he was not denied his right to testify before the grand jury (see *People v Ballard*, 13 AD3d 670, 671, lv denied 4 NY3d 796; see also *People v Parker*, 63 AD3d 537, 537).

Entered: September 27, 2013

Frances E. Cafarell
Clerk of the Court