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This memorandum is uncorrected and subject to revision before  
publication in the New York Reports.  
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No. 109  
The People &c.,  
Respondent,  
v.  
Travis Augustine,  
Appellant.

Matthew C. Hug, for appellant.  
Hannah E. C. Moore, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed.  
Defendant Travis Augustine was convicted after a jury  
trial of second-degree murder, aggravated cruelty to animals, and  
fourth-degree criminal possession of stolen property (two  
counts). The victim, who died from a gunshot wound to the head,  
was discovered buried in the remote property she owned in Greene

County, New York, where she had been living with defendant for several months in a camper; her pet bulldog, shot five times in the head, was buried above her. While in jail for a violation of probation (VOP), defendant was twice questioned by police about the victim's disappearance, the second time after her body had been discovered. Counsel was not present. Defendant claims that his constitutional right to counsel was violated because he was represented by counsel on the VOP at the time, as evidenced by the notation made on an arraignment memorandum by the Town Justice who arraigned him on the VOP.

Assuming, without deciding, that defendant's indelible right to counsel was violated, any error was harmless beyond a reasonable doubt (see People v Lopez, 16 NY3d 375, 386-387 [2011], citing People v Douglas, 4 NY3d 777, 779 [2005]; see also People v Crimmins, 36 NY2d 230, 240-241 [1975]). There is no reasonable possibility that the introduction of the two challenged statements affected defendant's conviction in view of the other evidence, including two counseled statements to police and testimony of numerous witnesses, that overwhelmingly established his guilt.

Defendant's claim of insufficient evidence to support his conviction for aggravated cruelty to animals is unpreserved; his remaining claims are without merit.

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Order affirmed, in a memorandum. Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott and Rivera concur. Judge Abdus-Salaam took no part.

Decided June 6, 2013