

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

D56707
L/htr

_____AD3d_____

Argued - June 1, 2018

WILLIAM F. MASTRO, J.P.
CHERYL E. CHAMBERS
SANDRA L. SGROI
JOSEPH J. MALTESE, JJ.

2014-10873

DECISION & ORDER

The People, etc., respondent,
v Clarence Cash, appellant.

(Ind. No. 483/12)

Mark S. DeMarco, Bronx, NY (Anthony L. Ricco of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, NY (John M. Castellano, Johnnette Traill, Joseph N. Ferdenzi, and Danielle S. Fenn of counsel), for respondent.


Appeal by the defendant from a judgment of the Supreme Court, Queens County (Richard L. Buchter, J.), rendered November 12, 2014, convicting him of murder in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

We agree with the Supreme Court's denial of the defendant's request for a jury charge on the affirmative defense of extreme emotional disturbance (*see* Penal Law § 125.25[1][a]). The evidence, viewed in the light most favorable to the defendant, was insufficient for the jury to find, by a preponderance of the evidence, that the defendant acted under the influence of an extreme emotional disturbance when he shot and killed his wife, and that there was a reasonable explanation or excuse for that disturbance (*see* Penal Law § 125.25[1][a]; *People v Roche*, 98 NY2d 70, 76-78; *People v White*, 79 NY2d 900, 904; *People v Walker*, 64 NY2d 741, 743).

MASTRO, J.P., CHAMBERS, SGROI and MALTESE, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court

September 26, 2018

PEOPLE v CASH, CLARENCE