

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

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O/kmg

_____AD3d_____

Submitted - October 30, 2008

STEVEN W. FISHER, J.P.
RUTH C. BALKIN
WILLIAM E. McCARTHY
JOHN M. LEVENTHAL, JJ.

2006-06782

DECISION & ORDER

The People, etc., respondent,
v Adam Moghaddam, appellant.

(Ind. No. 05-00788)

Edward C. Bruno, Pine Bush, N.Y., for appellant, and appellant pro se.

Francis D. Phillips II, District Attorney, Goshen, N.Y. (Andrew R. Kass of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Orange County (Berry, J.), rendered June 20, 2006, convicting him of manslaughter in the second degree and assault in the third degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620, 621), we find that it was legally sufficient to establish the defendant's guilt of manslaughter in the second degree beyond a reasonable doubt (*see People v Heinsohn*, 61 NY2d 855; *People v Newman*, 26 AD3d 589; *People v Hart*, 8 AD3d 402). Moreover, in fulfilling our responsibility to conduct an independent review of the weight of the evidence (*see CPL 470.15[5]*; *People v Danielson*, 9 NY3d 342), we nevertheless accord great deference to the jury's opportunity to view the witnesses, hear the testimony, and observe demeanor (*see People v Mateo*, 2 NY3d 383, 410, *cert denied* 542 US 946; *People v Bleakley*, 69 NY2d 490, 495). Upon reviewing the record here, we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

November 25, 2008

PEOPLE v MOGHADDAM, ADAM

Page 1.

The trial court erred in allowing the testimony of a physician as to certain statements made to him by the defendant, as such testimony violated the defendant's physician-patient privilege (*see* CPLR 4504[a]; *cf. People v Bowen*, 229 AD2d 954). However, the evidence of the defendant's guilt, without reference to the physician's challenged testimony, was overwhelming, and there is no reasonable probability that the error might have contributed to the defendant's conviction. Thus, the error was harmless (*see People v Crimmins*, 36 NY2d 230, 241-242; *People v Lacewell*, 44 AD3d 876; *People v Bowen*, 229 AD2d at 954).

The defendant's contention that he was denied his right to a fair trial by the allegedly prejudicial effect of certain evidence indicating that he had smoked marijuana prior to the subject incident is without merit.

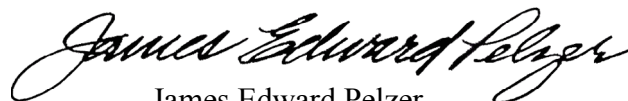
Contrary to the defendant's contention, he was not denied his right to a fair trial by certain remarks made by the court that allegedly demeaned defense counsel in the presence of the jury, "since the court's actions did not 'cast a pall of suspicion' over the defendant's case" (*People v Grant*, 184 AD2d 729, 729, quoting *People v De Jesus*, 42 NY2d 519, 524; *cf. People v Montes*, 141 AD2d 767, 769). In any event, the court effectively alleviated any alleged prejudice to the defendant resulting from the remarks by instructing the jury not to infer from its remarks that it holds any personal view against the defendant and by also instructing the jury to disregard any exchanges between the court and counsel, instructions that the jury is presumed to have followed (*see People v Berg*, 59 NY2d 294, 300).

To the extent the defendant's claim that he was denied his right to effective assistance of counsel is reviewable on the record before us (*see People v Kinchen*, 60 NY2d 772; *People v Love*, 57 NY2d 998, 1000; *People v Grove*, 272 AD2d 480; *People v Langhorne*, 177 AD2d 713), we find that the defendant received meaningful representation (*see People v Benevento*, 91 NY2d 708, 712; *People v Baldi*, 54 NY2d 137, 147; *People v Gillespie*, 36 AD3d 626).

The defendant's contentions raised in Point Two of his supplemental pro se brief are without merit, his contentions raised in Point One of his supplemental pro se brief are unpreserved for appellate review, and his contentions raised in Point Three of his supplemental pro se brief are not reviewable on this appeal (*see People v Jenkins*, 38 AD3d 566).

FISHER, J.P., BALKIN, McCARTHY and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court