

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

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**KA 06-02142**

PRESENT: SCUDDER, P.J., SMITH, PERADOTTO, CARNI, AND GREEN, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JERRY L. GARCIA-SANTIAGO, 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 (LESLIE E. SWIFT OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Supreme Court, Monroe County (David D. Egan, J.), rendered September 30, 2005. The judgment convicted defendant, upon a nonjury verdict, of manslaughter in the first degree.

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

Memorandum: On appeal from a judgment convicting him following a nonjury trial of manslaughter in the first degree (Penal Law § 125.20), defendant contends that Supreme Court erred in determining that a police officer was qualified to testify as an expert witness concerning the behavior of an individual with a blood alcohol content of .03%. Defendant failed to object to the testimony of the officer on that ground and thus failed to preserve that contention for our review (see CPL 470.05 [2]; see generally *People v Delatorres*, 34 AD3d 1343, 1344, lv denied 8 NY3d 921; *People v Smith*, 24 AD3d 1253, lv denied 6 NY3d 818). We decline to exercise our power to review that contention as a matter of discretion in the interest of justice (see CPL 470.15 [6] [a]). We reject defendant's further contention that the court erred in admitting the officer's testimony in evidence because it lacked a proper foundation (see generally *People v Jones*, 73 NY2d 427, 430), and was irrelevant (see generally *People v Scarola*, 71 NY2d 769, 777). The sentence is not unduly harsh or severe.

Entered: March 20, 2009

JoAnn M. Wahl  
Clerk of the Court