

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

1025

KA 06-02135

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

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

QUAN NGUYEN, ALSO KNOWN AS DAVID NGUYEN,
DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (MARY P. DAVISON OF
COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (JAMES P. MAXWELL
OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Onondaga County
(John J. Brunetti, A.J.), rendered July 17, 2006. The judgment
convicted defendant, upon a nonjury verdict, of manslaughter in the
second degree.

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

Memorandum: Defendant appeals from a judgment convicting him
following a nonjury trial of one count of manslaughter in the second
degree (Penal Law § 125.15 [1]) and two counts of endangering the
welfare of a child (§ 260.10 [1], [2]).

Defendant failed to preserve for our review his contention that
Supreme Court erred in admitting certain expert medical testimony
presented by the People on the ground that the testimony lacked a
proper foundation or was speculative (see CPL 470.05 [2]) and, in any
event, that contention lacks merit (see *generally* Prince, Richardson
on Evidence § 7-315 [Farrell 11th ed]).

Contrary to defendant's further contention, viewing the evidence
in light of the elements of the crimes in this nonjury trial (see
People v Danielson, 9 NY3d 342, 349), we conclude that the verdict is
not against the weight of the evidence (see *generally* *People v*
Bleakley, 69 NY2d 490, 495). The court was presented with conflicting
expert testimony concerning the cause of death of the victim, and the
court was entitled to credit the expert testimony presented by the
People (see *People v Fields*, 16 AD3d 142, 1v denied 4 NY3d 886; see
generally *People v Miller*, 91 NY2d 372, 380). Finally, the sentence

is not unduly harsh or severe.

Entered: October 2, 2009

Patricia L. Morgan
Clerk of the Court