

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

**1541**

**KA 07-01840**

PRESENT: SCUDDER, P.J., SMITH, GREEN, PINE, AND GORSKI, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DONYELL J. MCKENZIE, DEFENDANT-APPELLANT.

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TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JAMES ECKERT OF COUNSEL), FOR DEFENDANT-APPELLANT.

DONYELL J. MCKENZIE, DEFENDANT-APPELLANT PRO SE.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (JOSEPH D. WALDORF OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Monroe County Court (Frank P. Geraci, Jr., J.), rendered August 22, 2007. The judgment convicted defendant, upon a jury verdict, of murder in the second degree.

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

Memorandum: Defendant appeals from a judgment convicting him upon a jury verdict of murder in the second degree (Penal Law § 125.25 [1]). Contrary to defendant's contention, County Court properly refused to charge the affirmative defense of extreme emotional disturbance. Such a charge is not appropriate where, as here, the defendant's conduct before, during and after the offense is "inconsistent with the loss of self-control associated with the defense" (*People v Roche*, 98 NY2d 70, 77; see *People v Smith*, 1 NY3d 610, 612). Viewing the evidence in the light most favorable to defendant, we conclude that there was not the requisite "sufficient credible evidence . . . presented for the jury to find, by a preponderance of the evidence, that the elements of the affirmative defense [had] been established" (*People v White*, 79 NY2d 900, 902-903), particularly in view of the conflicting reasons given by defendant for his actions.

Contrary to defendant's further contention, the sentence is not unduly harsh or severe.

All concur except PINE, J., who is not participating.

Entered: February 10, 2011

Patricia L. Morgan  
Clerk of the Court