

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

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KA 07-01036

PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

FREDDY H. FULLER, DEFENDANT-APPELLANT.

DAVID M. GIGLIO, UTICA, FOR DEFENDANT-APPELLANT.

SCOTT D. MCNAMARA, DISTRICT ATTORNEY, UTICA (STEVEN G. COX OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Oneida County Court (Barry M. Donalty, J.), rendered December 12, 2006. The judgment convicted defendant, upon his plea of guilty, of murder in the second degree and attempted robbery in the first degree.

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

Memorandum: Defendant appeals from a judgment convicting him, upon his plea of guilty, of murder in the second degree (Penal Law § 125.25 [3]) and attempted robbery in the first degree (§ 160.15 [2]). Although the challenge by defendant to County Court's suppression ruling survives his guilty plea (see CPL 710.70 [2]), that challenge is without merit. The court in fact suppressed all statements made after defendant invoked his right to counsel, with the exception of a spontaneous statement made by defendant concerning the arresting officer's plan to obtain a search warrant. Contrary to defendant's contention, the spontaneous statement did not result from " 'words or actions on the part of police officers that they *should have known* were reasonably likely to elicit an incriminating response' " (*Rhode Island v Innis*, 446 US 291, 302; see *People v Ferro*, 63 NY2d 316, 322-323, cert denied 472 US 1007).

Entered: February 11, 2010

Patricia L. Morgan
Clerk of the Court