

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

D14034
X/nl

_____AD3d_____

Argued - January 29, 2007

REINALDO E. RIVERA, J.P.
PETER B. SKELOS
MARK C. DILLON
JOSEPH COVELLO, JJ.

2005-05459

DECISION & ORDER

The People, etc., respondent,
v Gina Guillen, appellant.

(Ind. No. 909/03)

Lynn W. L. Fahey, New York, N.Y. (Bertrand J. Kahn of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano and
Karen Wigle Weiss of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Spires, J.), rendered May 10, 2005, convicting her of assault in the first degree and criminal possession of a weapon in the fourth 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 the defense of justification was disproved beyond a reasonable doubt (*see* Penal Law § 35.15; *People v Lance*, 31 AD3d 467, *lv denied* 7 NY3d 814; *People v Grey*, 282 AD2d 544, 545; *People v O'Brien*, 270 AD2d 433, 433-434; *People v Arlequin*, 214 AD2d 747, 748). Furthermore, resolution of issues of credibility is primarily a matter to be determined by the jury, which saw and heard the witnesses, and its determination should be accorded great deference on appeal (*see People v Romero*, 7 NY3d 633, 644-645; *People v Mateo*, 2 NY3d 383, 410, *cert denied* 542 US 946). Upon the exercise of our factual review power (*see* CPL 470.15

[5]), we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero, supra; People v O'Brien, supra* at 434).

RIVERA, J.P., SKELOS, DILLON and COVELLO, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court