

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

D14486
C/cb

_____AD3d_____

Submitted - February 9, 2007

STEPHEN G. CRANE, J.P.
ANITA R. FLORIO
STEVEN W. FISHER
THOMAS A. DICKERSON, JJ.

2004-07085

DECISION & ORDER

The People, etc., respondent,
v Ramon Santos-Mispas, appellant.

(Ind. No. 03-00989)

Janet A. Gandolfo, Sleepy Hollow, N.Y., for appellant.

Francis D. Phillips II, District Attorney, Goshen, N.Y. (David R. Huey of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Orange County (De Rosa, J.), rendered July 30, 2004, convicting him of assault in the second degree and criminal possession of a weapon in the fourth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that his justification defense was not disproven beyond a reasonable doubt is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Gray*, 86 NY2d 10, 19; *People v Johnson*, 302 AD2d 539). In any event, viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620, 621), we find that it was legally sufficient to disprove the defense of justification and to establish the defendant's guilt beyond a reasonable doubt. Moreover, 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*, 7 NY3d 633).

The defendant's claim that the court considered improper factors in imposing sentence is also unpreserved for appellate review (*see* CPL 470.05[2]; *People v Ponder*, 1 AD3d 616). In any

March 27, 2007

Page 1.

PEOPLE v SANTOS-MISPAS, RAMON

event, the claim is without merit (*see People v Harrison*, 188 AD2d 374, 375, *affd* 82 NY2d 693; *see generally People v Notey*, 72 AD2d 279, 282-283). The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

The defendant's remaining contention is without merit.

CRANE, J.P., FLORIO, FISHER and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the CourtP