

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

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_____AD3d_____

Submitted - March 1, 2007

A. GAIL PRUDENTI, P.J.
STEVEN W. FISHER
EDWARD D. CARNI
WILLIAM E. McCARTHY, JJ.

2005-09492

DECISION & ORDER

The People, etc., respondent,
v Neilasan Chung, appellant.

(Ind. No. 05-00092)

Marianne Karas, Armonk, N.Y., for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (Lois Cullen Valerio, Richard Longworth Hecht, and Anthony J. Servino of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Westchester County (Adler, J.), rendered September 6, 2005, convicting him of manslaughter in the first degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that the People failed to disprove his defense of justification beyond a reasonable doubt. Viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620), we find that it was legally sufficient to establish that the defendant caused the victim's death by stabbing him without reason to believe that the victim, who was unarmed, was about to use deadly physical force against him (*see People v Terrero*, 31 AD3d 672; *People v Wahedi*, 301 AD2d 541, 541-542; *People v Henegan*, 150 AD2d 606, 607). Additionally, the jury could have found that the defendant had the opportunity to retreat safely without resorting to the use of deadly physical force (*see Penal Law § 35.15[2][a]*; *People v Wahedi, supra* at 542). 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).

April 3, 2007

PEOPLE v CHUNG, NEILASAN

Page 1.

The defendant received the effective assistance of trial counsel (*see People v Baldi*, 54 NY2d 137).

The defendant's remaining contentions are unpreserved for appellate review.

PRUDENTI, P.J., FISHER, CARNI and McCARTHY, 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 Court