

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

D15123  
W/gts

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - April 10, 2007

ROBERT A. SPOLZINO, J.P.  
STEVEN W. FISHER  
JOSEPH COVELLO  
WILLIAM E. McCARTHY, JJ.

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2004-10210

DECISION & ORDER

The People, etc., respondent,  
v Aquila Gaither, appellant.

(Ind. No. 7543/03)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Cynthia Kean,  
and Ron Carny of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County  
(Tomei, J.), rendered November 8, 2004, convicting him of murder in the second degree, upon a jury  
verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the evidence adduced at trial, when viewed  
in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620), was legally  
sufficient to disprove his defense of justification beyond a reasonable doubt (*see Penal Law*  
§ 35.15[2][a]; *People v Spencer*, 2 AD3d 545; *People v Pizarro*, 297 AD2d 826). 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 remaining contention is without merit.

SPOLZINO, J.P., FISHER, COVELLO and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

May 15, 2007

PEOPLE v GAITHER, AQUILA