

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

D18057
Y/prt

_____AD3d_____

Submitted - January 17, 2008

PETER B. SKELOS, J.P.
STEVEN W. FISHER
MARK C. DILLON
WILLIAM E. McCARTHY, JJ.

2005-00206

DECISION & ORDER

The People, etc., respondent,
v Donald Martin, appellant.

(Ind. No. 6872/03)

Lynn W. L. Fahey, New York, N.Y. (William Kastin of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Linda Breen of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Reichbach, J.), rendered December 20, 2004, convicting him of assault in the second degree (two counts) 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 contentions that the evidence presented was legally insufficient to disprove the defense of justification and establish that one of the victims suffered a physical injury within the meaning of Penal Law § 10.00(9) are unpreserved for appellate review (*see People v Finger*, 95 NY2d 894, 895; *People v Alston*, 42 AD3d 468; *People v Carranza*, 306 AD2d 351, 352, *aff'd* 3 NY3d 729). In any event, 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 disprove the defendant's justification defense and establish that the victim in question suffered a physical injury.

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; *People v Wolf*, 16 AD3d 1167; *People v Holmes*, 9 AD3d 689; *People v Baa*, 189 AD2d 771).

SKELOS, J.P., FISHER, DILLON and McCARTHY, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court