

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

D19162
O/prt

_____AD3d_____

Submitted - April 8, 2008

STEVEN W. FISHER, J.P.
DAVID S. RITTER
ANITA R. FLORIO
EDWARD D. CARNI, JJ.

2003-10261

DECISION & ORDER

The People, etc., respondent,
v Travis Hayes, appellant.

(Ind. No. 03-00009)

Salvatore C. Adamo, New York, N.Y., for appellant, and appellant pro se.

Francis D. Phillips II, District Attorney, Goshen, N.Y. (Daniel M. Reback of counsel),
for respondent.

Appeal by the defendant from a judgment of the County Court, Orange County (Rosenwasser, J.), rendered November 7, 2003, convicting him of manslaughter in the first degree and criminal possession of a weapon in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The trial court correctly declined to provide the jury with a charge regarding the temporary, innocent, and lawful possession of a weapon, as there was no reasonable view of the evidence that the defendant had a legal excuse for possessing the weapon and that the weapon had not been used in a dangerous manner (*see People v Banks*, 76 NY2d 799, 801; *People v Snyder*, 73 NY2d 900, 902; *People v Williams*, 50 NY2d 1043, 1044-1045; *People v Caldarola*, 45 AD3d 600, 600-601; *People v Medina*, 237 AD2d 382, 382-383).

The defendant was not denied the effective assistance of counsel because trial counsel withdrew the defense request for a justification charge. Considering the record in the light most favorable to the defendant, there was no reasonable view of the evidence supporting such a charge (*see People v Reynoso*, 73 NY2d 816; *People v Harris*, 48 AD3d 830; *People v Ojar*, 38 AD3d 684,

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685; *People v Pichardo*, 168 AD2d 577, 578; *People v Douglas*, 160 AD2d 1015).

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 the defendant's guilt beyond a reasonable doubt. Moreover, 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*, 7 NY3d 633).

The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

The defendant's remaining contentions either are without merit or do not warrant reversal.

FISHER, J.P., RITTER, FLORIO and CARNI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court