

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

D19275
O/prt

_____AD3d_____

Argued - April 18, 2008

PETER B. SKELOS, J.P.
FRED T. SANTUCCI
RUTH C. BALKIN
RANDALL T. ENG, JJ.

2005-09025

DECISION & ORDER

The People, etc., respondent,
v Jason Bianco, appellant.

(Ind. No. 3906/04)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Anne C. Feigus, and Terry-Ann Llewellyn of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Chambers, J.), rendered September 8, 2005, convicting him of manslaughter in the first degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the evidence was legally insufficient to disprove his justification defense is not preserved for appellate review (*see People v Gray*, 86 NY2d 10; *People v Boyle*, 289 AD2d 251, 251-252). 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 establish that the defendant caused the victim's death by shooting him six times, without reason to believe that the victim, who was unarmed and fleeing, was about to use deadly physical force against him (*see People v Chung*, 39 AD3d 558; *People v Thompson*, 212 AD2d 647; *People v Griffin*, 207 AD2d 844; *People v Candelaria*, 206 AD2d 385, 385-386; *People v Lemaire*, 187 AD2d 532, 533).

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

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633, 644; *People v Douglas*, 17 AD3d 380, 381; *People v Rishton*, 303 AD2d 692, 692-693).

The sentence imposed was not excessive (see *People v Holmes*, 12 AD3d 532; *People v Suite*, 90 AD2d 80).

SKELOS, J.P., SANTUCCI, BALKIN and ENG, JJ., concur.

ENTER:


James Edward Kelly
Clerk of the Court