

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

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Submitted - September 4, 2008

ROBERT A. LIFSON, J.P.  
ANITA R. FLORIO  
RANDALL T. ENG  
ARIEL E. BELEN, JJ.

2006-03832

DECISION & ORDER

The People, etc., respondent,  
v Pascual Polanco, appellant.

(Ind. No. 05-00337)

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Mary E. Zugibe, Garnerville, N.Y., for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (Richard Longworth Hecht of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Rockland County (Nelson, J.), rendered April 10, 2006, convicting him of criminal possession of a weapon in the third 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 support his conviction is not preserved for appellate review (*see People v Finger*, 95 NY2d 894, 895; *People v Cona*, 49 NY2d 26, 33 n 2). 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 the defendant's guilt beyond a reasonable doubt. The defendant's own testimony and the testimony of the complainant both indicated that the defendant held a knife to the victim's throat after the victim denied that he was harboring the defendant's missing wife (*see People v Nealy*, 32 AD3d 400, 401; *People v Johnson*, 23 AD3d 686; *accord People v Williams*, 235 AD2d 267). 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*

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*Nealy*, 32 AD3d at 401; *People v Johnson*, 23 AD3d 686; *cf. People v Bell*, 158 AD2d 697, 698).

Contrary to the defendant's contention, the trial court did not err in declining to instruct the jury on the defense of justification (*see People v Pons*, 68 NY2d 264; *People v Cruz*, 13 AD3d 390; *People v Tomback*, 244 AD2d 586; *People v Olivera*, 157 AD2d 676, 677).

LIFSON, J.P., FLORIO, ENG and BELEN, 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