

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

D22127
T/cb

_____AD3d_____

Submitted - January 20, 2009

REINALDO E. RIVERA, J.P.
DANIEL D. ANGIOLILLO
EDWARD D. CARNI
WILLIAM E. McCARTHY, JJ.

2007-07789

DECISION & ORDER

The People, etc., respondent,
v Michael Johnson, appellant.

(Ind. No. 1254N-06)

Alan Katz, Garden City, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Robert A. Schwartz and Andrew Fukuda of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Nassau County (Ayres, J.), rendered July 27, 2007, convicting him of attempted robbery in the first degree and criminal possession of a weapon in the third degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant argues that the trial court erred in failing to instruct the jury on the defense of justification. However, contrary to his contention, the justification defense does not apply to the charges of either attempted robbery in the first degree (*see People v Ware*, 36 AD3d 838, 839; *People v Ellison*, 175 AD2d 846), or criminal possession of the weapon in the third degree (*see People v Pons*, 68 NY2d 264, 266; *People v Almodovar*, 62 NY2d 126, 130; *People v Smith*, 54 AD3d 421, 422; *People v Tasheem*, 298 AD2d 411, 412).

RIVERA, J.P., ANGIOLILLO, CARNI and McCARTHY, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court

February 17, 2009

PEOPLE v JOHNSON, MICHAEL