

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

D23369  
Y/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - March 26, 2009

ROBERT A. SPOLZINO, J.P.  
MARK C. DILLON  
ANITA R. FLORIO  
ARIEL E. BELEN, JJ.

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2004-03344

DECISION & ORDER

The People, etc., respondent,  
v Kenneth Albritton, appellant.

(Ind. No. 166/03)

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Lynn W. L. Fahey, New York, N.Y. (Joshua M. Levine of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Camille O'Hara Gillespie, and Noah J. Gellner of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Gerges, J.), rendered April 1, 2004, convicting him of manslaughter in the second 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 defendant failed to preserve for appellate review his contention that he was prejudiced by the Supreme Court's failure to deliver a justification charge (*see* CPL 470.05[2]; *People v Harris*, 48 AD3d 830; *People v Kelly*, 183 AD2d 784, 785). In any event, the Supreme Court was not required to provide a justification charge, since no reasonable view of the evidence would support a finding that the defendant's actions were justified (*see People v Watts*, 57 NY2d 299, 301-302; *People v DeLeon*, 46 AD3d 569; *People v Robinson*, 295 AD2d 544; *People v Davis*, 293 AD2d 486). Further, under these circumstances there is no merit to the defendant's contention that he was denied the effective assistance of trial counsel based upon trial counsel's failure to request a justification charge (*see People v Hayes*, 51 AD3d 688; *People v Harris*, 48 AD3d at 831).

SPOLZINO, J.P., DILLON, FLORIO and BELEN, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court

June 2, 2009

PEOPLE v ALBRITTON, KENNETH