

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

D27277
G/kmg

_____AD3d_____

Argued - March 29, 2010

JOSEPH COVELLO, J.P.
FRED T. SANTUCCI
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON, JJ.

2007-11282

DECISION & ORDER

The People, etc., respondent,
v Lee Battle, appellant.

(Ind. No. 1293/07)

Lynn W. L. Fahey, New York, N.Y. (Andrew E. Abraham of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Keith Dolan of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Marrus, J.), rendered November 19, 2007, convicting him of murder 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's contention that the People failed to disprove his justification defense beyond a reasonable doubt is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Hawkins*, 11 NY3d 484, 492; *People v Gray*, 86 NY2d 10, 19) and, in any event, is without merit. 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 disprove the justification defense and to establish the defendant's guilt of murder in the second degree beyond a reasonable doubt. The evidence established that the victim was unarmed when the defendant shot at him three times from behind (*see People v Rishton*, 303 AD2d 692; *People v Holmes*, 242 AD2d 278; *People v Tineo*, 144 AD2d 507). Moreover, upon our independent review pursuant to CPL 470.15(5), we are satisfied that the jury's rejection of the justification defense was not against the weight of evidence (*see People v Romero*, 7 NY3d 633).

May 11, 2010

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Since the defendant failed to object to the trial court's justification charge or to request supplemental jury instructions, the defendant's argument concerning that charge is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Fowle*, 60 AD3d 691; *People v Martinez*, 243 AD2d 732). In any event, the trial court's charge, viewed in its entirety, adequately conveyed the appropriate standard to the jury (*see People v Coleman*, 70 NY2d 817, 819; *People v Joseph*, 253 AD2d 529; *People v Martinez*, 243 AD2d 732).

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

COVELLO, J.P., SANTUCCI, ANGIOLILLO and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court