

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

D29618  
O/kmb

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

Argued - November 29, 2010

WILLIAM F. MASTRO, J.P.  
STEVEN W. FISHER  
SHERI S. ROMAN  
SANDRA L. SGROI, JJ.

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2008-09959

DECISION & ORDER

The People, etc., respondent,  
v David Harper, appellant.

(Ind. No. 518/06)

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

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Nicoletta J. Caferra, and Merri Turk Lasky of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Aloise, J.), rendered September 24, 2009, convicting him of manslaughter in the first degree and criminal possession of a weapon in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the trial court did not err by giving a justification charge which did not reference a third party who fought with the defendant shortly before the struggle between the defendant and the victim which resulted in the victim's demise. Viewing the evidence in the light most favorable to the defendant, we find that the defendant was not entitled to a justification instruction regarding that third party (*see* Penal Law § 35.15[2]; *People v McGhee*, 4 AD3d 485; *People v Powell*, 181 AD2d 923). Moreover, when viewed in its entirety, the court's charge adequately conveyed the proper definitions and elements of the justification defense (*see People v Cheeseboro*, 52 AD3d 526; *People v Strong*, 256 AD2d 427).

MASTRO, J.P., FISHER, ROMAN and SGROI, JJ., concur.

ENTER:

  
Matthew G. Kiernan

December 17, 2010

PEOPLE v HARPER, DAVID

Clerk of the Court

December 17, 2010

PEOPLE v HARPER, DAVID