

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

D30131
C/prt

_____AD3d_____

Submitted - January 28, 2011

WILLIAM F. MASTRO, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
ROBERT J. MILLER, JJ.

2008-07024

DECISION & ORDER

The People, etc., respondent,
v Khadim Gueye, appellant.

(Ind. No. 3210/05)

Lynn W. L. Fahey, New York, N.Y. (Steven R. Bernhard of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Nicoletta J. Caferri, and Jennifer Hagan of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Aloise, J.), rendered July 16, 2008, convicting him of manslaughter in the first degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention concerning the trial court's charge on the issue of justification is unreserved for appellate review, and we decline to review this issue in the exercise of our interest of justice jurisdiction (*see People v Barreto*, 70 AD3d 574, 575; *People v Ware*, 36 AD3d 838, 839, *mod* 10 NY3d 457; *People v Palmer*, 34 AD3d 701, 703-704; *People v Soto*, 31 AD3d 793, 793; *People v Peterkin*, 23 AD3d 678, 679; *People v Jung*, 22 AD3d 506, 506; *People v Holmes*, 12 AD3d 532, 532; *cf. People v Feuer*, 11 AD3d 633, 634).

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

February 22, 2011

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The defendant's remaining contention is without merit.

MASTRO, J.P., BALKIN, LEVENTHAL and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court