

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

D32820  
N/kmb

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

Argued - October 18, 2011

REINALDO E. RIVERA, J.P.  
RANDALL T. ENG  
ARIEL E. BELEN  
LEONARD B. AUSTIN, JJ.

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2010-03737

DECISION & ORDER

The People, etc., respondent,  
v Luis Garcia, appellant.

(Ind. No. 2136/09)

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

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Jeanette Lifschitz, and Karen Wigle Weiss of counsel; Lorrie A. Zinno on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Latella, J.), rendered April 12, 2010, convicting him of assault in the second degree and criminal possession of a weapon in the fourth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the prosecution 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; *People v Acquista*, 41 AD3d 491, 491-492; *People v Santos-Mispas*, 38 AD3d 923). In any event, viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620, 621), we find that it was legally sufficient to disprove the defendant's justification defense beyond a reasonable doubt (*see* Penal Law § 35.15; *People v Seals*, 78 AD3d 742; *People v Stoney*, 72 AD3d 708).

Moreover, in fulfilling our responsibility to conduct an independent review of the weight of the evidence (*see* CPL 470.15[5]; *People v Danielson*, 9 NY3d 342), we nevertheless

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accord great deference to the jury's opportunity to view the witnesses, hear the testimony, and observe demeanor (*see People v Mateo*, 2 NY3d 383, 410, *cert denied* 542 US 946; *People v Bleakley*, 69 NY2d 490, 495). Upon reviewing the record here, we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

RIVERA, J.P., ENG, BELEN and AUSTIN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court