

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

D36741  
G/kmb

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

Argued - November 15, 2012

MARK C. DILLON, J.P.  
CHERYL E. CHAMBERS  
SANDRA L. SGROI  
ROBERT J. MILLER, JJ.

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2011-09083

DECISION & ORDER

The People, etc., respondent,  
v Jovany Huddleston, appellant.

(Ind. No. 1361/10)

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Joseph R. Faraguna, Sag Harbor, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Jason R. Richards and Joseph Mogelnicki of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Nassau County (Peck, J.), rendered September 15, 2011, convicting him of manslaughter in the second degree, criminal possession of a weapon in the third degree, and assault in the third degree, after a nonjury trial, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that the evidence was legally insufficient to establish that he acted recklessly in causing the death of the victim is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Gray*, 86 NY2d 10; *People v Henrius*, 6 AD3d 548; *People v Addison*, 290 AD2d 453). In any event, 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 establish the defendant's guilt of manslaughter in the second degree beyond a reasonable doubt (*see* Penal Law § 15.05[3]; *People v Henrius*, 6 AD3d at 549; *People v Dewese*, 198 AD2d 430, 430-431).

The defendant's contention that the People did not disprove his justification defense beyond a reasonable doubt is unpreserved for appellate review (*see People v Garguilio*, 57 AD3d

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797; *People v Terrero*, 31 AD3d 672; *People v Wimberly*, 19 AD3d 518). In any event, the evidence, when viewed in the light most favorable to the prosecution, was legally sufficient to disprove the defendant's justification defense beyond a reasonable doubt (*see* Penal Law § 35.15; *People v Terrero*, 31 AD3d at 673; *People v Wimberly*, 19 AD3d at 518; *People v Durand*, 188 AD2d 747). Upon our independent review of the evidence pursuant to CPL 470.15(5), we are satisfied that the rejection of the justification defense and the verdict of guilt on the count of manslaughter in the second degree were not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

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

DILLON, J.P., CHAMBERS, SGROI and MILLER, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court