

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

D36767  
N/kmb

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

Argued - November 20, 2012

DANIEL D. ANGIOLILLO, J.P.  
THOMAS A. DICKERSON  
L. PRISCILLA HALL  
LEONARD B. AUSTIN, JJ.

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2009-11198

DECISION & ORDER

The People, etc., respondent,  
v Joel Fowler, appellant.

(Ind. No. 564/08)

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Lynn W. L. Fahey, New York, N.Y. (David P. Greenberg of counsel), for appellant.

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

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Del Giudice, J.), rendered November 24, 2009, convicting him of murder in the second degree, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing, of that branch of the defendant's omnibus motion which was to suppress certain statements he made to law enforcement officials.

ORDERED that the judgment is affirmed.

The defendant contends that certain statements he made to law enforcement officials should have been suppressed. However, the specific arguments asserted by the defendant on appeal to support this contention are unpreserved for appellate review (*see* CPL 470.05[2]; *People v Vasquez*, 66 NY2d 968, 970, *cert denied* 475 US 1109; *People v Maxis*, 50 AD3d 922, 923; *People v Rogers*, 34 AD3d 504, 505). Moreover, the defendant may not rely upon trial testimony to challenge a suppression ruling where, as here, he failed to request a reopening of the suppression hearing (*see People v Abrew*, 95 NY2d 806, 808; *People v Cortez*, 81 AD3d 742, 742; *People v Maxis*, 50 AD3d at 923; *People v McFarlane*, 18 AD3d 577, 578). In any event, the defendant's contention is without merit (*see People v Petronio*, 34 AD3d 602, 604; *People v Miller*, 268 AD2d

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600, 600-601). Accordingly, the Supreme Court properly declined to suppress the statements in question.

“A person is justified in using deadly force against another if he or she reasonably believes such to be necessary to defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of deadly physical force by such other person. A court need not charge the defense of justification if, considering the record in the light most favorable to the defendant, no reasonable view of the evidence supports it” (*People v Ojar*, 38 AD3d 684, 684-685 [citations and internal quotation marks omitted]). Contrary to the defendant’s contention, the Supreme Court properly denied his request to charge the jury regarding the justification defense, as no reasonable view of the evidence supported such a charge (*see People v Long*, 259 AD2d 634).

The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80, 86).

ANGIOLILLO, J.P., DICKERSON, HALL and AUSTIN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court