

# State of New York Court of Appeals

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## MEMORANDUM

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 31  
The People &c.,  
Respondent,  
v.  
Hassan Rkein,  
Appellant.

Mandy E. Jaramillo, for appellant.  
Jared Wolkowitz, for respondent.

### MEMORANDUM:

The order of the Appellate Division should be affirmed. Defendant's request for a justification instruction with respect to the second-degree assault charge was properly denied. On this record, the trial court appropriately determined that, if the jury convicted

defendant of second-degree assault by means of a dangerous instrument (Penal Law § 120.05 [2]), it necessarily determined that defendant employed deadly, rather than ordinary, physical force by striking the complainant on the head with a pint glass (see People v Vega, \_\_ NY3d \_\_ [2019] [decided today]). The trial court also properly determined that no reasonable view of the evidence supported a deadly force justification charge. The evidence at trial—including video surveillance of the altercation—shows that, at the time defendant employed deadly physical force, the complainant had merely pushed defendant, albeit with “pretty strong force,” and then rested his hands at his sides while a female patron attempted to separate the two men. Because defendant could not have reasonably believed that the complainant was using or about to use deadly physical force (Penal Law § 35.15 [2]; Matter of Y.K., 87 NY2d 430, 433-434 [1996]), he was not entitled to a deadly force justification charge.

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Order affirmed, in a memorandum. Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia, Wilson and Feinman concur.

Decided May 7, 2019