



the evidence in the light most favorable to the People, the evidence is legally insufficient to prove beyond a reasonable doubt that defendants acted with the culpable mental state of depraved indifference (People v Feingold [\_\_\_ NY3d \_\_\_ [2006] [decided July 5, 2006]). The evidence is legally sufficient, however, to support the jury's determination that defendants acted recklessly.

\* \* \* \* \*

In each case: On review of submissions pursuant to section 500.11 of the Rules, order modified by reducing defendant's conviction of assault in the first degree to assault in the third degree and remitting to Supreme Court, Queens County, for resentencing and, as so modified, affirmed, in a memorandum. Judges G.B. Smith, Rosenblatt, Read and R.S. Smith concur. Chief Judge Kaye and Judges Ciparick and Graffeo concur in result on constraint of People v. Feingold (\_\_\_ NY3d \_\_\_ [2006] [decided July 5, 2006]).

Decided July 6, 2006