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This memorandum is uncorrected and subject to revision before  
publication in the New York Reports.  
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3                   No.    172  
The People &c.,  
                  Appellant-Respondent,  
                  v.  
Raymond C. George,  
                  Respondent-Appellant.

David J. Wukitsch, for respondent-appellant.  
James Sacket, for appellant-respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed.

Contrary to the People's contention, defendant properly  
preserved for our review his challenge to the legal sufficiency  
of his depraved indifference murder conviction (see People v  
Hawkins, \_\_ NY3d \_\_ [decided today]).

The Appellate Division properly evaluated defendant's sufficiency challenge in light of our current decisional law on depraved indifference murder (see People v Jean-Baptiste, \_\_\_ NY3d \_\_\_ [decided herewith]). We agree with the Appellate Division that the evidence was insufficient to establish that defendant acted with depraved indifference to human life, but was legally sufficient to convict him of the lesser included offense of manslaughter in the second degree (Penal Law § 125.15 [1]).

\* \* \* \* \*

Order affirmed, in a memorandum. Chief Judge Kaye and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided November 25, 2008