

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

838

KA 10-01054

PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, SCONIERS, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JESUS TORRES, DEFENDANT-APPELLANT.

STEVEN J. GETMAN, OVID, FOR DEFENDANT-APPELLANT.

BARRY L. PORSCHE, DISTRICT ATTORNEY, WATERLOO, FOR RESPONDENT.

Appeal from a judgment of the Seneca County Court (Dennis F. Bender, J.), rendered April 12, 2010. The judgment convicted defendant, upon a jury verdict, of assault in the third degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: On appeal from a judgment convicting him upon a jury verdict of assault in the third degree (Penal Law § 120.00 [2]), defendant contends that County Court erred in refusing to instruct the jury on the defense of justification. We reject that contention. There is no reasonable view of the evidence that defendant reasonably believed that physical force was necessary to defend himself from what he reasonably believed to be "the use or imminent use of unlawful physical force" (§ 35.15 [1]; see *People v Lewis*, 13 AD3d 208, 209, *affd* 5 NY3d 546; *Matter of Y.K.*, 87 NY2d 430, 433-434; see generally *People v Butts*, 72 NY2d 746, 750).

Entered: July 8, 2011

Patricia L. Morgan
Clerk of the Court