

COPY

# State of New York

## Court of Appeals

BEFORE: HON. EUGENE M. FAHEY,  
Associate Judge

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THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

NOE LOPEZ SUCHITE,

Appellant.

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**ORDER  
DENYING  
LEAVE**  
CLA-2021-00704

Appellant having applied for leave to appeal to this Court pursuant to Criminal Procedure Law § 460.20 from an order in the above-captioned case;\*

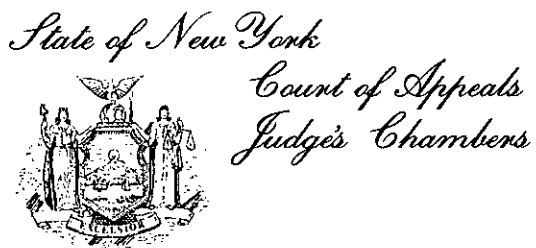
UPON the papers filed and due deliberation, it is

ORDERED that the application is denied.

Dated: JUL 06 2021  
at Buffalo, NY

  
EUGENE M. FAHEY  
Associate Judge

\*Description of Order: Order of the Supreme Court, Appellate Division, Second Department, entered February 17, 2021, affirming a judgment of the County Court, Rockland County, rendered November 6, 2017.



July 6, 2021

Noe Lopez Suchite  
#17-A-4608  
Green Haven Correctional Facility  
P.O. Box 4000  
Stormville, NY 12582-4000

Re: People v Noe Lopez Suchite

Dear Mr. Suchite:

Enclosed you will find a copy of an Order denying your application for permission to appeal to the Court of Appeals in this case.

Very truly yours,

A handwritten signature in black ink, appearing to read "E. Fahey", with a long, sweeping underline that extends to the right.

EUGENE M. FAHEY  
ASSOCIATE JUDGE  
NEW YORK STATE COURT OF APPEALS

EMF/mkw  
Enclosure

cc: Hon. Thomas E. Walsh  
John R. Lewis, Esq.

S

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

D65693  
Y/htr

\_\_\_\_ AD3d \_\_\_\_

Submitted - January 14, 2021

REINALDO E. RIVERA, J.P.  
COLLEEN D. DUFFY  
ANGELA G. IANNACCI  
PAUL WOOTEN, JJ.

2018-12018

DECISION & ORDER

The People, etc., respondent,  
v Noe Lopez Suchite, appellant.

(Ind. No. 16-00312)

John R. Lewis, Sleepy Hollow, NY, for appellant.

Thomas E. Walsh II, District Attorney, New City, NY (Marissa L. Licata and Jacob B. Sher of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Rockland County (David S. Zuckerman, J.), rendered November 6, 2017, convicting him of assault in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the trial court properly refused to instruct the jury on the defense of justification. "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" (*People v Taylor*, 150 AD3d 768, 769 [internal quotation marks omitted]; see Penal Law § 35.15[2][a]). Here, viewing the record in the light most favorable to the defendant (see *People v Sparks*, 29 NY3d 932, 934), there is no reasonable view of the evidence that would have permitted the factfinder to conclude that the defendant's use of deadly physical force was justified (see *People v Taylor*, 150 AD3d at 769; *People v Heron*, 130 AD3d 754, 755).

The defendant contends that his counsel was ineffective for failing to request an adverse inference charge based upon the People's failure to proffer video evidence from a security

February 17, 2021

PEOPLE v SUCHITE, NOE LOPEZ

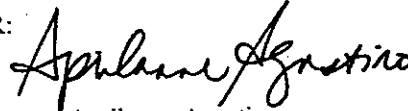
Page 1.

17 A 466

camera allegedly located in the area of the subject incident. However, because the record does not establish that the police or the prosecution were ever in possession of such alleged video evidence, the defendant was not entitled to an adverse inference charge (*see People v Robinson*, 143 AD3d 744; *People v Rivera*, 126 AD3d 818, 819). Therefore, counsel was not ineffective for failing to request the charge (*see People v Stultz*, 2 NY3d 277, 287).

RIVERA, J.P., DUFFY, IANNACCI and WOOTEN, JJ., concur.

ENTER:

A handwritten signature in cursive script, appearing to read "Aprilanne Agostino".

Aprilanne Agostino  
Clerk of the Court

## WESTLAW

**People v Suchite**

Supreme Court, Appellate Division, Second Department, New York · February 17, 2021 | 191 A.D.3d 906 138 N.Y.S.3d 877 (Mem) · 20



View National Reporter System version

191 A.D.3d 906, 138 N.Y.S.3d 877 (Mem), 2021 N.Y. Slip Op. 01075

**\*1** The People of the State of New York, Respondent,

v

Noe Lopez Suchite, Appellant.

Supreme Court, Appellate Division, Second Department, New York

16-00312, 2018-12018

February 17, 2021

CITE TITLE AS: People v Suchite

**HEADNOTES**

Crimes

Instructions

Charge for Justified Use of Deadly Physical Force Not Warranted

Crimes

Right to Counsel

Effective Representation

John R. Lewis, Sleepy Hollow, NY, for appellant.

Thomas E. Walsh II, District Attorney, New City, NY (Marissa L. Licata and Jacob B. Sher of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Rockland County (David S. Zuckerman, J.), rendered November 6, 2017, convicting him of assault in the second degree, upon a jury verdict, and imposing sentence.

Ordered that the judgment is affirmed.

Contrary to the defendant's contention, the trial court properly refused to instruct the jury on the defense of justification. "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" (*People v Taylor*, 150 AD3d 768, 769 [2017] [internal quotation marks omitted]; see Penal Law § 35.15 [2] [a]). Here, viewing the record in the light most favorable to the defendant (see *People v Sparks*, 29 NY3d 932, 934 [2017]), there is no reasonable view of the evidence that would have permitted the factfinder to

## WESTLAW

**People v. Suchite**

Supreme Court, Appellate Division, Second Department, New York. February 17, 2021 191 A.D.3d 906 138 N.Y.S.3d 877 (Mem) 20

View New York Official Reports version

191 A.D.3d 906

Supreme Court, Appellate Division, Second Department, New York.

The PEOPLE, etc., respondent,

v.

Noe Lopez SUCHITE, appellant.

2018–12018

(Ind. No. 16–00312)

Submitted—January 14, 2021

February 17, 2021

**Attorneys and Law Firms**

John R. Lewis, Sleepy Hollow, NY, for appellant.

Thomas E. Walsh II, District Attorney, New City, N.Y. (Marissa L. Licata and Jacob B. Sher of counsel), for respondent.

REINALDO E. RIVERA, J.P., COLLEEN D. DUFFY, ANGELA G. IANNACCI, PAUL WOOTEN, JJ.

**DECISION & ORDER**

Appeal by the defendant from a judgment of the County Court, Rockland County (David S. Zuckerman, J.), rendered November 6, 2017, convicting him of assault in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the trial court properly refused to instruct the jury on the defense of justification. "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" (*People v. Taylor*, 150 A.D.3d 768, 769, 53 N.Y.S.3d 702 [internal quotation marks omitted]; see Penal Law § 35.15[2][a]). Here, viewing the record in the light most favorable to the defendant (see *People v. Sparks*, 29 N.Y.3d 932, 934, 51 N.Y.S.3d 14, 73 N.E.3d 354), there is no reasonable view of the evidence that would have permitted the factfinder to conclude that the defendant's use of deadly physical force was justified (see *People v. Taylor*, 150 A.D.3d at 769, 53 N.Y.S.3d 702; *People v. Heron*, 130 A.D.3d 754, 755, 13 N.Y.S.3d 243).

conclude that the defendant's use of deadly physical force was justified (see *People v Taylor*, 150 AD3d at 769; *People v Heron*, 130 AD3d 754, 755 [2015]).

The defendant contends that his counsel was ineffective for failing to request an adverse inference charge based upon the People's failure to proffer video evidence from a security camera allegedly located in the area of the subject incident. However, because the record does not establish that the police or the prosecution were ever in possession of such alleged video evidence, the defendant was not entitled to an adverse inference charge (see *People v Robinson*, 143 AD3d 744 [2016]; *People v Rivera*, 126 AD3d 818, 819 [2015]). Therefore, counsel was not ineffective for failing to request the charge (see *People v Stultz*, 2 NY3d 277, 287 [2004]). Rivera, J.P., Duffy, Iannacci and Wooten, JJ., concur.

Copr. (C) 2021, Secretary of State, State of New York

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**End of  
Document**

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ACCUSATORY INSTRUMENT  
FELONY COMPLAINT - C.P.L 100.15

Spring Valley Police Department  
Case #: 2016-13753

**STATE OF NEW YORK :: COUNTY OF ROCKLAND  
SPRING VALLEY VILLAGE COURT**

*The People of the State of New York  
against*

**Noe Lopez-Suchite**  
*Defendant.*

**05/21/1988**  
*Date of Birth*

**FELONY  
COMPLAINT**

I, Detective Ted Hughes, the complainant herein, of the Spring Valley Police Department, accuse **Noe Lopez-Suchite**, of 21 Collins Ave. Spring Valley, New York, the DEFENDANT in these actions, and charge that on or about the 20th day of August, 2016, at **37-39 South Main St. Spring Valley, New York** in the Village of Spring Valley, County of Rockland, State of New York, at about **4:10** in the forenoon, said DEFENDANT committed the offenses of: *4:10 AM or later is fair testimony. The problem is to see 3:30 and because the 4:10 AM all the boys are close in NY state*

**Law Section:**

**1) PL 120.10 (1) Assault in the first degree**

A person is guilty of assault in the first degree when: 1. With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument.

**2) PL 265.01 (2) Criminal possession of a weapon in the fourth degree**

A person is guilty of criminal possession of a weapon in the fourth degree when: (2) He possesses any dagger, dangerous knife, dink, razor, stilette, imitation pistol, or any other dangerous or deadly instrument or weapon with intent to use the same unlawfully against another.

**To Wit:**

Deponent is informed by Victim Jose R. Hernandez of an address known to the Spring Valley Police Department that, on the above date, time and location, he observed a man, later determined to be the defendant, **Noe Lopez-Suchite**, stab him in the left side of his chest with a knife.

Deponent is informed by Spring Valley Police Department Detective Eugene Suarez that he conducted a recorded interview of the defendant during which the defendant made a full confession regarding the stabbing of the aforementioned victim and admitted that the knife recovered from his person was the weapon used in the stabbing.

All contrary to the provisions of the statute in such case made and provided.

That the source of deponent's information and the grounds of his belief as to all matters herein stated upon information and belief are based upon and derived from the annexed affidavit of Victim Jose Hernandez, sworn to on the 20th day of August, 2016, the personal knowledge of the deponent and The annexed affidavits of Jean L. Adrien, Abel Monzon, RCSO Officer T. Hendrickson, NYSP Trooper J. Caban and the recorded interview of the defendant in which he makes a full confession.

☒ WHEREFORE I REQUEST THAT CRIMINAL PROCESS BE ISSUED TO COMPEL THE DEFENDANT TO ANSWER THE AFORESAID ACCUSATION.

NOTE: False statements made herein are punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law of the State of New York.

*[Signature]*  
SDS

U.S. DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
121 RED SCHOOLHOUSE ROAD  
FISHKILL, NY 12524

In the Matter of:  
LOPEZ SUCHITE, NOE  
17A4608  
RESPONDENT

Case No.: A216-082-601

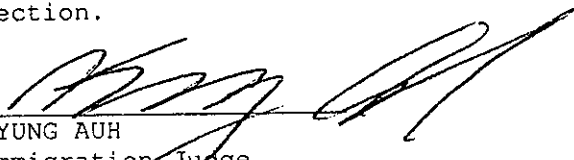
IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

Upon the basis of respondent's admissions, I have determined that the respondent is subject to removal on the charge(s) in the Notice to Appear. Respondent has made no application for relief from removal.

It is **HEREBY ORDERED** that the respondent be removed from the United States to **GUATEMALA** on the charge(s) contained in the Notice to Appear.

Any alien against whom a final order of removal is outstanding by reason of being a member of any of the classes described in INA section 237(a), who willfully fails or refuses to present himself or herself for removal at the time and place required by the Attorney General shall be fined and/or imprisoned for up to ten years. Further, any alien who willfully fails or refuses to depart from the United States pursuant to a final removal order or present for removal at the time and place required by the Attorney General shall pay a civil penalty of not more than \$500 to the Commissioner for each day the alien is in violation of this section.

  
KYUNG AUH  
Immigration Judge  
Date: Sep 3, 2019

~~Appeal:~~ NO APPEAL (A/I/B)  
~~Appeal Due By:~~ Oct 3, 2019

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)  
TO: ☐ ALIEN ☒ ALIEN c/o Custodial Officer ☒ Alien's ATT/REP ☐ DHS  
DATE: 09/03/19 BY: COURT STAFF CLL  
Attachments: ☐ EOIR-33 ☐ EOIR-28 ☐ Legal Services List ☐ Other

LAW OFFICES OF  
**JOHN R. LEWIS**  
36 HEMLOCK DRIVE  
SLEEPY HOLLOW, NEW YORK 10591  
Tel. (914) 332-8629  
Fax (914) 631-1899  
counselorjrl@aol.com

Jan. 7, 2020

Noe Lopez Suchite  
17 A 4608  
Green Haven C.F.  
P.O. Box 4000  
Stormville, NY 12582-4000

Re: People v. Suchite

Dear Mr. Suchite:

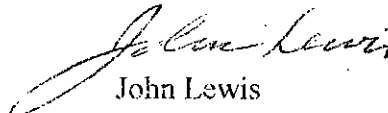
Enclosed is a copy of the brief I have written and filed for your appeal. I hope you find it satisfactory.

I know you wanted a copy of the transcript, but that is an expense that the court will not reimburse me for. HOWEVER: you do have the right to apply to the Court for permission to file a *pro se* supplemental brief (which you should file IF you've read my brief and feel that there are things I did not say that you think should be said.) if the court grants you this permission, then the Court will provide you with a copy of the transcripts FREE OF CHARGE.

I still have the Notice of Motion for permission that you sent to me, but you need to re-write it and put new dates on it, and maybe include a statement about why you want to file a supplemental brief that shows that you've read MY brief, and still want to file a supplemental. The Court will want to see evidence that you're familiar with my brief before they grant you permission to file a supplemental. So, rewrite your application, and then file it with the Court within the next 30 days, with proof of service on the D.A., just like you did it last time. I think the Court will grant your motion this time around.

Feel free to contact me with any questions.

Yours,

  
John Lewis