

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

D23103
W/hu

_____AD3d_____

Submitted - April 6, 2009

WILLIAM F. MASTRO, J.P.
JOSEPH COVELLO
RUTH C. BALKIN
LEONARD B. AUSTIN, JJ.

2007-09596

DECISION & ORDER

The People, etc., respondent,
v Rafael Rodriguez, appellant.

(Ind. No. 07-02007)

James D. Licata, New City, N.Y. (Lois Cappelletti of counsel), for appellant.

Thomas P. Zugibe, District Attorney, New City, N.Y. (Itamar J. Yeger and Robert H. Trudell of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Rockland County (Bartlett, J.) rendered September 18, 2007, convicting him of attempted rape in the first degree, sexual abuse in the first degree (two counts), and unlawful imprisonment in the second degree (two counts), upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant alleges that the counts of the indictment charging him with sexual abuse in the first degree (Penal Law § 130.65[1]) are jurisdictionally defective because they failed to assert the specific facts of the conduct alleged to have violated that provision. However, those counts of the indictment cited the applicable sections of the Penal Law and sufficiently tracked the language thereof to afford the defendant fair notice of the charge against him and, thus, were not jurisdictionally defective (*see* CPL 200.50[7][a]; *People v Dudley*, 289 AD2d 503).

The defendant's contention that the trial court did not adequately respond to jury notes requesting clarification is unpreserved for appellate review and, in any event, is without merit (*see* CPL 470.05[2]; *People v Leon*, 48 AD3d 701).

May 5, 2009

Page 1.

PEOPLE v RODRIGUEZ, RAFAEL

Viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620), we find that it was legally sufficient to establish the defendant's guilt beyond a reasonable doubt. Upon our independent review pursuant to CPL 470.15(5), we are satisfied that the verdict of guilt was not against the weight of the evidence (*see People v Romero*, 7 NY3d 633).

The sentence imposed was not excessive (*see Penal Law § 70.02; People v Adams*, 55 AD3d 616; *People v Suite*, 90 AD2d 80).

The defendant's remaining contentions are without merit.

MASTRO, J.P., COVELLO, BALKIN and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court