

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

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**KA 06-01497**

PRESENT: HURLBUTT, J.P., MARTOCHE, SMITH, CENTRA, AND PERADOTTO, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JAUQERE FLAGG, DEFENDANT-APPELLANT.

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FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (MARY P. DAVISON OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (MATTHEW H. JAMES OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Onondaga County Court (Joseph E. Fahey, J.), rendered April 6, 2006. The judgment convicted defendant, upon a jury verdict, of assault in the first degree.

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

Memorandum: Defendant appeals from a judgment convicting him as a juvenile offender upon a jury verdict of assault in the first degree (Penal Law § 120.10 [1]). Viewing the evidence in light of the elements of the crime as charged to the jury (*see People v Danielson*, 9 NY3d 342, 349), we conclude that the verdict is not against the weight of the evidence (*see generally People v Bleakley*, 69 NY2d 490, 495). "Where, as here, witness credibility is of paramount importance to the determination of guilt or innocence, [we] must give '[g]reat deference . . . [to the] fact-finder's opportunity to view the witnesses, hear the testimony and observe demeanor' " (*People v Harris*, 15 AD3d 966, 967, *lv denied* 4 NY3d 831, quoting *Bleakley*, 69 NY2d at 495). It was for the jury to determine whether to credit the victim's testimony, and we see no reason to disturb the jury's credibility determination (*see id.*). The sentence is not unduly harsh or severe. We note, however, that the certificate of conviction incorrectly reflects that defendant was sentenced to an indeterminate term of incarceration of 3½ to 10 years, and it must therefore be amended to reflect that he was sentenced to an indeterminate term of incarceration of 3a to 10 years (*see generally People v Saxton*, 32 AD3d 1286).

Entered: February 6, 2009

JoAnn M. Wahl  
Clerk of the Court