

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

291

KA 09-00599

PRESENT: SCUDDER, P.J., PERADOTTO, LINDLEY, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

RYAN J. CLEMENT, DEFENDANT-APPELLANT.

JANE G. LAROCK, WATERTOWN, FOR DEFENDANT-APPELLANT.

LEANNE K. MOSER, DISTRICT ATTORNEY, LOWVILLE (JOHN A. CIRANDO OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Lewis County Court (Charles C. Merrell, J.), rendered January 23, 2009. The judgment convicted defendant, upon a jury verdict, of criminal sexual act in the first degree, sexual abuse in the first degree, and endangering the welfare of a child.

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

Memorandum: Defendant appeals from a judgment convicting him upon a jury verdict of criminal sexual act in the first degree (Penal Law § 130.50 [3]), sexual abuse in the first degree (§ 130.65 [3]), and endangering the welfare of a child (§ 260.10 [1]). Defendant failed to preserve for our review his contention that County Court failed to administer the requisite oath to the prospective jurors pursuant to CPL 270.15 (1) (a) (*see People v Perez*, 67 AD3d 1324, 1326, *lv denied* 13 NY3d 941; *People v Hampton*, 64 AD3d 872, 877, *lv denied* 13 NY3d 796), and we decline to exercise our power to review that contention as a matter of discretion in the interest of justice (*see* CPL 470.15 [6] [a]). We reject defendant's further contention that the court erred in instructing the jury to disregard the lack of evidence of a physical examination of the victim. There was no testimony concerning such a physical examination or the lack thereof. Thus, the court properly sustained the prosecutor's objection to the comment of defense counsel on summation that no physical examination of the victim was conducted and instructed the jury "not to consider anything that may not be in evidence" (*see generally People v Holland*, 221 AD2d 947, *lv denied* 87 NY2d 922). The sentence is not unduly harsh or severe.

Defendant failed to preserve for our review his remaining contentions (*see* CPL 470.05 [2]), and we decline to exercise our power to review those contentions as a matter of discretion in the interest

of justice (see CPL 470.15 [6] [a]).

Entered: March 19, 2010

Patricia L. Morgan
Clerk of the Court