

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

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**KA 15-01965**

PRESENT: CENTRA, J.P., CARNI, NEMOYER, TROUTMAN, AND WINSLOW, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DEVONTE E. BURTON, DEFENDANT-APPELLANT.

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TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (A. VINCENT BUZARD OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (LISA GRAY OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Supreme Court, Monroe County (Alex R. Renzi, J.), rendered September 9, 2015. The judgment convicted defendant, upon a jury verdict, of sexual abuse in the first 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 sexual abuse in the first degree (Penal Law § 130.65 [1]), defendant contends that he was denied a fair trial by prosecutorial misconduct during jury selection and summation. Assuming, arguendo, that defendant's contention is preserved for our review (see CPL 470.05 [2]), we reject it. The prosecutor's questions during jury selection concerning the likelihood that a victim of child sexual abuse knows the offender were "relevant and material to the inquiry at hand" (*People v Sweney*, 55 AD3d 1350, 1351 [4th Dept 2008], *lv denied* 11 NY3d 901 [2008] [internal quotation marks omitted]; see generally CPL 270.15 [1] [c]). To the extent that the prosecutor mischaracterized the testimony of a witness during summation, we conclude that the prosecutor's comments were not so egregious as to deprive defendant of a fair trial (see *People v Fick*, 167 AD3d 1484, 1485-1486 [4th Dept 2018], *lv denied* 33 NY3d 948 [2019]; *People v Flowers*, 166 AD3d 1492, 1495 [4th Dept 2018], *lv denied* 32 NY3d 1125 [2018]).

Entered: September 27, 2019

Mark W. Bennett  
Clerk of the Court