

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

1037

KA 09-00921

PRESENT: MARTOCHE, J.P., CARNI, GREEN, PINE, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DAMIAN J. MATEO, DEFENDANT-APPELLANT.

JOHN E. TYO, SHORTSVILLE, FOR DEFENDANT-APPELLANT.

R. MICHAEL TANTILLO, DISTRICT ATTORNEY, CANANDAIGUA, FOR RESPONDENT.

Appeal from a judgment of the Ontario County Court (Craig J. Doran, J.), rendered April 15, 2005. 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 upon a jury verdict of assault in the first degree (Penal Law § 120.10 [1]). The evidence, viewed in the light most favorable to the People (*see People v Contes*, 60 NY2d 620, 621) is legally sufficient to support the conviction (*see generally People v Bleakley*, 69 NY2d 490, 495). As defendant correctly concedes, the People presented legally sufficient evidence establishing that his pit bull terrier constituted a dangerous instrument within the meaning of Penal Law § 10.00 (13) (*see People v Garraway*, 187 AD2d 761, 761-762, *lv denied* 81 NY2d 886), and that the pit bull caused the victim to sustain serious physical injury, here, "serious and protracted disfigurement," within the meaning of Penal Law § 10.00 (10) (*see People v Whyte*, 47 AD3d 852, 853-854; *People v Walos*, 229 AD2d 953). Defendant contends, however, that the evidence is legally insufficient to establish that he intended to cause such injury. We reject that contention (*see People v Truesdale*, 186 AD2d 496, *lv denied* 81 NY2d 766). In addition, viewing the evidence in light of the elements of the crime of assault 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 Bleakley*, 69 NY2d at 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). We see no reason to disturb the jury's determination to credit the testimony of the victim in this case (*see People v Flagg*, 59 AD3d 1003, *lv denied* 12 NY3d

853). Finally, the sentence is not unduly harsh or severe.

Entered: October 1, 2010

Patricia L. Morgan
Clerk of the Court