

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

803

KA 09-00274

PRESENT: SCUDDER, P.J., MARTOCHE, SCONIERS, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

FRANKIE L. LOUDER, III, DEFENDANT-APPELLANT.

TYSON BLUE, MACEDON, FOR DEFENDANT-APPELLANT.

RICHARD M. HEALY, DISTRICT ATTORNEY, LYONS (MELVIN BRESSLER OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Wayne County Court (Dennis M. Kehoe, J.), rendered February 3, 2009. The judgment convicted defendant, upon a jury verdict, of promoting prison contraband 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 promoting prison contraband in the first degree (Penal Law § 205.25 [2]). The evidence, viewed in the light most favorable to the People (*see People v Contes*, 60 NY2d 620, 621), is legally sufficient to establish that the cocaine discovered during a search of defendant's jail cell constituted dangerous contraband (*see People v Machuca*, 45 AD3d 1043, 1044, *lv denied* 10 NY3d 813). Defendant failed to preserve for our review his contention that the verdict is repugnant by failing to object to the verdict on that ground before the jury was discharged (*see People v Alfaro*, 66 NY2d 985, 987). 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]*). Contrary to the further contention of defendant, County Court did not abuse its discretion in limiting his cross-examination of a prosecution witness (*see People v Ward*, 27 AD3d 1119, *lv denied* 7 NY3d 819, 871). Finally, the sentence is not unduly harsh or severe.

Entered: June 11, 2010

Patricia L. Morgan
Clerk of the Court