

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D55682
C/htr

_____AD3d_____

Argued - February 6, 2018

LEONARD B. AUSTIN, J.P.
SHERI S. ROMAN
SANDRA L. SGROI
FRANCESCA E. CONNOLLY, JJ.

2015-03824

DECISION & ORDER

The People, etc., respondent,
v Mario Valdiviezo, appellant.

(Ind. No. 1936/13)

Paul Skip Laisure, New York, NY (Yvonne Shivers of counsel), for appellant.

Eric Gonzalez, District Attorney, Brooklyn, NY (Leonard Joblove and Jean M. Joyce of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Vincent Del Giudice, J.), rendered April 30, 2015, convicting him of use of a child in a sexual performance (2 counts), rape in the second degree (5 counts), criminal sexual act in the second degree (5 counts), rape in the third degree (9 counts), criminal sexual act in the third degree (12 counts), and endangering the welfare of a child, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's contention that he was deprived of a fair trial due to the admission, in violation of the best evidence rule, of an authenticated copy of an original DVD on which the defendant had recorded videos of the victim, himself, and other men engaging in sexual acts, is without merit (*see People v Craven*, 48 AD3d 1183, 1184; *People v Fondal*, 154 AD2d 476, 477).

Contrary to the defendant's contention, the sentence imposed, as reduced by operation of law pursuant to Penal Law § 70.30(1)(e), was not excessive (*see People v Suitte*, 90 AD2d 80).

The defendant's remaining contentions either are unpreserved for appellate review

June 13, 2018

Page 1.

PEOPLE v VALDIVIEZO, MARIO

or do not require reversal.

AUSTIN, J.P., ROMAN, SGROI and CONNOLLY, JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court