

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

D56314  
G/htr

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - April 26, 2018

ALAN D. SCHEINKMAN, P.J.  
REINALDO E. RIVERA  
CHERYL E. CHAMBERS  
HECTOR D. LASALLE, JJ.

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2016-08393

DECISION & ORDER

The People, etc., respondent,  
v Justin Carrino, appellant.

(Ind. No. 114/12)

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Arza R. Feldman, Uniondale, NY (Steven A. Feldman of counsel), for appellant.

William V. Grady, District Attorney, Poughkeepsie, NY (Kirsten A. Rappleyea of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Dutchess County (Craig Stephen Brown, J.), rendered July 22, 2016, convicting him of predatory sexual assault, aggravated sexual abuse in the first degree, rape in the first degree, assault in the second degree (two counts), and criminal contempt in the first degree, after a nonjury trial, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that he was deprived of his right to be present at all material stages of trial. A claim that a defendant has been excluded from a sidebar bench conference is without merit where, as here, the record is insufficient to establish facts necessary to meet the defendant's burden of showing that he was absent from a material stage of the trial (*see People v Velasquez*, 1 NY3d 44, 49; *People v McKean*, 89 AD3d 866, 868; *People v Carter*, 44 AD3d 677).

The County Court did not improvidently exercise its discretion in admitting into evidence a photograph depicting the complainant's home, and her two children in the background. The photo was relevant to a material issue at trial and elucidated the complainant's testimony (*see People v Primo*, 96 NY2d 351; *People v Heiserman*, 127 AD3d 1422).

August 15, 2018

PEOPLE v CARRINO, JUSTIN

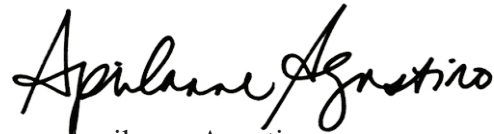
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Contrary to the People's contention, the defendant preserved for appellate review his challenge to the legal sufficiency of the evidence supporting the convictions of rape in the first degree, assault in the second degree (two counts), predatory sexual assault, and aggravated sexual abuse in the first degree (*see* CPL 470.05[2]). Viewing the evidence in the light most favorable to the prosecution (*see* *People v Contes*, 60 NY2d 620, 621), we find that it was legally sufficient to establish the defendant's guilt of those crimes. Moreover, in fulfilling our responsibility to conduct an independent review of the weight of the evidence (*see* CPL 470.15 [5]; *People v Danielson*, 9 NY3d 342, 348), we nevertheless accord great deference to the factfinder's opportunity to view the witnesses, hear the testimony, and observe demeanor (*see* *People v Mateo*, 2 NY3d 383; *People v Bleakley*, 69 NY2d 490, 495). Upon reviewing the record here, we are satisfied that the verdict of guilt as to those crimes was not against the weight of the evidence (*see* *People v Romero*, 7 NY3d 633).

The sentence imposed was not excessive (*see* *People v Suitte*, 90 AD2d 80).

SCHEINKMAN, P.J., RIVERA, CHAMBERS and LASALLE, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino  
Clerk of the Court