

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

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**KA 06-02078**

PRESENT: SMITH, J.P., LINDLEY, CURRAN, MONTOUR, AND OGDEN, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

THURMAN J. MACK, DEFENDANT-APPELLANT.

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JEFFREY WICKS, PLLC, ROCHESTER (JEFFREY WICKS OF COUNSEL), FOR  
DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (NANCY GILLIGAN OF  
COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Monroe County Court (Frank P. Geraci, Jr., J.), rendered May 10, 2006. The judgment convicted defendant upon a jury verdict of criminal sexual act in the first degree (two counts), sexual abuse in the second degree (three counts), attempted rape in the second degree, sexual abuse in the third degree (three counts), rape in the third degree (three counts) and endangering the welfare of a child.

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, inter alia, two counts of criminal sexual act in the first degree (Penal Law § 130.50 [4]), defendant contends that the verdict is against the weight of the evidence. We affirm.

Contrary to defendant's contention, while there were some inconsistencies in the testimony of the victim, her testimony was not incredible as a matter of law (see *People v O'Neill*, 169 AD3d 1515, 1515-1516 [4th Dept 2019]; *People v Smith*, 73 AD3d 1469, 1470 [4th Dept 2010], *lv denied* 15 NY3d 778 [2010]). Viewing the evidence in light of the elements of the crimes as charged to the jury (see *People v Danielson*, 9 NY3d 342, 349 [2007]), we conclude that, although a different verdict would not have been unreasonable, the jury did not fail to give the evidence the weight it should be accorded (see generally *People v Bleakley*, 69 NY2d 490, 495 [1987]). We have reviewed defendant's remaining contention and conclude that it does not warrant modification or reversal of the judgment.

Entered: June 30, 2023

Ann Dillon Flynn  
Clerk of the Court