

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

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**KA 13-00989**

PRESENT: WHALEN, P.J., CENTRA, LINDLEY, NEMOYER, AND TROUTMAN, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DENNIS ESTRUCH, DEFENDANT-APPELLANT.

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SESSLER LAW PC, GENESEO (STEVEN D. SESSLER OF COUNSEL), FOR  
DEFENDANT-APPELLANT.

GREGORY J. MCCAFFREY, DISTRICT ATTORNEY, GENESEO (JOSHUA J. TONRA OF  
COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Livingston County Court (Dennis S. Cohen, J.), rendered January 17, 2013. The judgment convicted defendant, upon a jury verdict, of reckless endangerment 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 reckless endangerment in the first degree (Penal Law § 120.25). Contrary to defendant's contention, he was not denied his right to counsel by County Court's refusal to grant his request for new counsel inasmuch as defendant did not make a "seemingly serious request[]" for new counsel (*People v Sides*, 75 NY2d 822, 824 [1990]).

We reject defendant's contention that he was denied his right to be present at a material stage of trial (*see generally People v Roman*, 88 NY2d 18, 26 [1996], *rearg denied* 88 NY2d 920 [1996]). The conversations between the court and defense counsel regarding defendant's competency did not require defendant's presence (*see People v Kimes*, 37 AD3d 1, 30-31 [1st Dept 2006], *lv denied* 8 NY3d 881 [2007], *reconsideration denied* 9 NY3d 846 [2007]; *People v Horan*, 290 AD2d 880, 884 [3d Dept 2002], *lv denied* 98 NY2d 638 [2002]). In any event, those conversations were repeated on the record when defendant was present, thus obviating any possible error (*see People v Purcelle*, 107 AD3d 1050, 1051 [3d Dept 2013]; *People v Forte*, 243 AD2d 578, 578 [2d Dept 1997], *lv denied* 91 NY2d 891 [1998]).

Finally, the court did not err in failing to sua sponte order a competency examination (*see CPL 730.30 [1]; People v Bryant*, 117 AD3d 1591, 1591 [4th Dept 2014], *lv denied* 23 NY3d 1034 [2014]; *see*

*generally People v Tortorici*, 92 NY2d 757, 765 [1999], *cert denied* 528 US 834 [1999]). The record supports the court's determination that "[d]efendant's remarks . . . were suggestive of a[n] obstructionist frame of mind, not an incompetent one" (*People v Johnson*, 145 AD3d 1109, 1110 [3d Dept 2016], *lv denied* 29 NY3d 949 [2017]).

Entered: September 28, 2018

Mark W. Bennett  
Clerk of the Court