

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

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KA 08-01560

PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, PINE, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JONAS DELPRINCE, DEFENDANT-APPELLANT.

MICHAEL B. JONES, BUFFALO, FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (SUSAN H. SADINSKY OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (M. William Boller, A.J.), rendered May 2, 2008. The judgment convicted defendant, upon a jury verdict, of assault in the second degree and endangering the welfare of a child.

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 assault in the second degree (Penal Law § 120.05 [9]) and endangering the welfare of a child (§ 260.10 [1]). Contrary to defendant's contention, Supreme Court properly allowed the five-year-old victim to give unsworn testimony (*see People v Paul*, 48 AD3d 833, *lv denied* 10 NY3d 868; *People v Miller*, 295 AD2d 746, 747-748). Although the victim did not understand the nature of an oath and thus could not give sworn testimony, he possessed "sufficient intelligence and capacity" to give unsworn evidence (CPL 60.20 [2]; *see People v Raymond*, 60 AD3d 1388, *lv denied* 12 NY3d 919). Defendant failed to preserve for our review his further contention that the victim's unsworn testimony was not sufficiently corroborated (*see Raymond*, 60 AD3d 1388; *People v McLoud*, 291 AD2d 867, *lv denied* 98 NY2d 678) and, in any event, that contention is without merit (*see Raymond*, 60 AD3d 1388; *Paul*, 48 AD3d 833; *see generally* CPL 60.20 [3]; *People v Groff*, 71 NY2d 101, 103-104, 109-110). Defendant also failed to preserve for our review his contention that the evidence is legally insufficient to establish that the victim sustained a physical injury (*see People v Hawkes*, 39 AD3d 1209, 1210, *lv denied* 9 NY3d 844, 845; *People v Sommerville*, 30 AD3d 1093, 1095). Viewing the evidence in light of the elements of the crimes as charged to the jury (*see People v Danielson*, 9 NY3d 342, 349), we conclude that the verdict is not against the weight of the evidence (*see generally People v Bleakley*, 69 NY2d 490, 495). Finally, the sentence is not unduly

harsh or severe.

Entered: February 11, 2010

Patricia L. Morgan
Clerk of the Court