

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

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**KA 09-00922**

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

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

ORDER

STEPHEN SIMON, ALSO KNOWN AS "LUCK,"  
DEFENDANT-APPELLANT.

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KEVIN J. BAUER, ALBANY, FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (MICHAEL J. HILLERY  
OF COUNSEL), FOR RESPONDENT.

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Appeal from an order of the Erie County Court (Shirley Troutman, J.), entered March 26, 2009. The order, insofar as appealed from, denied the motion of defendant pursuant to CPL 440.30 (1-a) for DNA testing of certain evidence.

It is hereby ORDERED that the order so appealed from is unanimously affirmed for reasons stated in the decision at County Court.

Entered: June 11, 2010

Patricia L. Morgan  
Clerk of the Court