

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

922

KA 07-01489

PRESENT: SCUDDER, P.J., MARTOCHE, PERADOTTO, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JAMES MCFARLEY, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (DAVID M. ABBATOY, JR., OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (GEOFFREY KAEUPER OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Elma A. Bellini, J.), rendered April 26, 2007. The judgment convicted defendant, upon a jury verdict, of 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 after a jury trial of endangering the welfare of a child (Penal Law § 260.10 [1]). Contrary to defendant's contention, viewing the evidence in light of the elements of the crime as charged to the jury (see *People v Danielson*, 9 NY3d 342, 348-349), we conclude that the verdict is not against the weight of the evidence (see generally *People v Bleakley*, 69 NY2d 490, 495). It cannot be said that the victim's testimony was incredible as a matter of law (see *People v Rufus*, 56 AD3d 1175, lv denied 11 NY3d 930; cf. *People v O'Neil*, 66 AD3d 1131, 1133-1134). We note in any event that defense counsel highlighted the evidence concerning the motivation of the victim to fabricate her allegations, and the jury's resolution of credibility issues with respect to the victim's testimony is entitled to great deference (see *People v Young*, 55 AD3d 1234, 1235-1236, lv denied 11 NY3d 901; *People v Baker*, 30 AD3d 1102, lv denied 7 NY3d 846).

Entered: October 1, 2010

Patricia L. Morgan
Clerk of the Court