

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

886

KA 06-00233

PRESENT: MARTOCHE, J.P., FAHEY, PERADOTTO, AND GREEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JOHN H. BUTLER, DEFENDANT-APPELLANT.

STEPHEN BIRD, ROCHESTER, FOR DEFENDANT-APPELLANT.

JOSEPH V. CARDONE, DISTRICT ATTORNEY, ALBION (KATHERINE BOGAN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Orleans County Court (James P. Punch, J.), rendered November 21, 2005. The appeal was held by this Court by order entered December 21, 2007, decision was reserved and the matter was remitted to Orleans County Court for further proceedings (46 AD3d 1446). The proceedings were held and completed.

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 criminal possession of a controlled substance in the fourth degree (Penal Law § 220.09 [1]). We previously held the case, reserved decision and remitted the matter to County Court for a reconstruction hearing to determine whether the prospective jurors had been properly sworn in compliance with CPL 270.15 (1) (a) (*People v Butler*, 46 AD3d 1446). Upon remittal, we conclude that the court properly determined that there was such compliance with the statute. Defendant's remaining contentions extend beyond the scope of the remittal and were not raised by defendant prior to remittal. Even assuming, arguendo, that those contentions are properly before us, we would conclude that they are without merit.

Entered: July 2, 2010

Patricia L. Morgan
Clerk of the Court