

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

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KA 10-00559

PRESENT: SCUDDER, P.J., FAHEY, PERADOTTO, CARNI, AND WHALEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

LEWIS MOORE, JR., DEFENDANT-APPELLANT.

FRANK J. NEBUSH, JR., PUBLIC DEFENDER, UTICA (PATRICK J. MARTHAGE OF COUNSEL), FOR DEFENDANT-APPELLANT.

SCOTT D. MCNAMARA, DISTRICT ATTORNEY, UTICA (STEVEN G. COX OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Oneida County Court (Michael L. Dwyer, J.), rendered September 11, 2009. The judgment convicted defendant, upon a nonjury verdict, of grand larceny in the fourth degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: On appeal from a judgment convicting him following a nonjury trial of grand larceny in the fourth degree (Penal Law § 155.30 [1]), defendant contends that County Court erred in admitting in evidence a spreadsheet listing the value of jackets stolen from the retail store and that the evidence of the value of the jackets stolen is legally insufficient to support the conviction. In objecting to the admission of the exhibit in evidence, defendant contended only that it contradicted the testimony of the store owner. We thus conclude that defendant failed to preserve for our review his present contention that the document did not meet the foundational requirements of the business records exception to the hearsay rule (*see People v Evans*, 59 AD3d 1127, 1128, *lv denied* 12 NY3d 815; *see also People v Billip*, 65 AD3d 430, 430, *lv denied* 13 NY3d 834; *People v Sanchez*, 260 AD2d 178, 178-179, *lv denied* 93 NY2d 1026). We decline to exercise our power to review that contention as a matter of discretion in the interest of justice (*see CPL 470.15 [6] [a]*). By making only a general motion to dismiss the indictment, defendant failed to preserve for our review his contention that the conviction is not supported by legally sufficient evidence (*see People v Gray*, 86 NY2d 10, 19). In any event, we conclude that defendant's contention lacks merit.

Entered: February 6, 2015

Frances E. Cafarell
Clerk of the Court