

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

1246

KA 08-02679

PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, LINDLEY, AND GREEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

STEPHEN P. FRANCIS, DEFENDANT-APPELLANT.

FRANK J. NEBUSH, JR., PUBLIC DEFENDER, UTICA (MARK C. CURLEY 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 August 1, 2008. The judgment convicted defendant, upon a jury verdict, of grand larceny in the third degree and petit larceny.

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 grand larceny in the third degree (Penal Law § 155.35) and petit larceny (§ 155.25). We reject the contention of defendant that he was denied his right to be informed of the charges against him based upon the failure of the People to specify whether they were proceeding under a theory of larceny by false pretenses (§ 155.05 [2] [a]) or by commission of the crime of issuing a bad check (§ 155.05 [2] [c]). "The People are not required to specify any particular theory of larceny in the indictment . . .[, and t]he present indictment and discovery provided sufficient information to prepare and present a defense" (*People v Cannon*, 194 AD2d 496, 498, lv denied 82 NY2d 715, 805; see *People v Farruggia*, 41 AD2d 894). The general motion by defendant for a trial order of dismissal failed to preserve for our review his further contention that the evidence is legally insufficient to support the conviction (see *People v Gray*, 86 NY2d 10, 19). 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).

Entered: November 12, 2010

Patricia L. Morgan
Clerk of the Court