

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

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**KA 12-01286**

PRESENT: SMITH, J.P., FAHEY, VALENTINO, WHALEN, AND MARTOCHE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TRACY Q. WASHINGTON, DEFENDANT-APPELLANT.

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FRANK M. BOGULSKI, BUFFALO, FOR DEFENDANT-APPELLANT.

R. MICHAEL TANTILLO, DISTRICT ATTORNEY, CANANDAIGUA (JAMES B. RITTS OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Ontario County Court (Thomas M. Van Strydonck, J.), rendered November 17, 2011. The judgment convicted defendant, upon a nonjury verdict, of burglary in the third degree and petit larceny.

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

Memorandum: On appeal from a judgment convicting him, upon a nonjury verdict, of burglary in the third degree (Penal Law § 140.20) and petit larceny (§ 155.25), defendant contends that the evidence is legally insufficient to establish with respect to both crimes that the merchandise he returned to a Lord & Taylor store was stolen or that he knew that it was stolen. We reject that contention. Viewed in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620, 621), the evidence is legally sufficient to establish that defendant knowingly returned unpurchased merchandise in exchange for store credit, which he then used to purchase an item of clothing (*see* §§ 140.20, 155.25; *People v Weaver*, 89 AD3d 1477, 1478; *see generally People v Bleakley*, 69 NY2d 490, 495). Additionally, viewing the evidence in light of the elements of the crimes in this nonjury trial (*see People v Danielson*, 9 NY3d 342, 349), we conclude that the verdict is not against the weight of the evidence (*see generally Bleakley*, 69 NY2d at 495).

Entered: February 1, 2013

Frances E. Cafarell  
Clerk of the Court