

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

558

KA 14-01950

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, LINDLEY, AND DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ROBERT C. DIEHL, DEFENDANT-APPELLANT.

GARUFI LAW P.C., BINGHAMTON (CARMEN M. GARUFI OF COUNSEL), FOR DEFENDANT-APPELLANT.

LEANNE K. MOSER, DISTRICT ATTORNEY, LOWVILLE, D.J. & J.A. CIRANDO, ESQS., SYRACUSE (JOHN A. CIRANDO OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Lewis County Court (Donald E. Todd, A.J.), rendered December 4, 2013. The judgment convicted defendant, upon a nonjury verdict, of attempted grand larceny in the third degree, offering a false instrument for filing in the first degree and official misconduct.

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

Memorandum: Defendant appeals from a judgment convicting him following a nonjury trial of, inter alia, attempted grand larceny in the third degree (Penal Law §§ 110.00, 155.35). Contrary to defendant's contention, County Court did not abuse its discretion in allowing the People to reopen their proof to properly identify defendant (see CPL 260.30 [7]). Although defendant is correct that the People initially failed to ask their witnesses on direct examination to identify defendant, the identity of defendant was " 'simple to prove and not hotly contested' " (*People v Whipple*, 97 NY2d 1, 7).

By failing to renew his motion for a trial order of dismissal after presenting evidence, defendant failed to preserve his challenge to the legal sufficiency of the evidence (see *People v Hines*, 97 NY2d 56, 61, rearg denied 97 NY2d 678; *People v Brown*, 120 AD3d 1545, 1546, lv denied 24 NY3d 1082). 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 *People v Bleakley*, 69 NY2d 490, 495). The court "was entitled to reject defendant's version of the events 'and, upon our review of the record, we cannot say that the court failed to give the evidence the weight that it should be

accorded' " (*People v McCoy*, 100 AD3d 1422, 1422).

Frances E. Cafarell

Entered: May 1, 2015

Clerk of the Court