

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

982

**KA 12-00715**

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

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

SABRINA GUNTER, DEFENDANT-APPELLANT.

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TYSON BLUE, MACEDON, FOR DEFENDANT-APPELLANT.

RICHARD M. HEALY, DISTRICT ATTORNEY, LYONS (DAVID V. SHAW OF COUNSEL),  
FOR RESPONDENT.

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Appeal from a judgment of the Wayne County Court (Dennis M. Kehoe, J.), rendered July 19, 2011. The judgment convicted defendant, upon a jury verdict, of assault in the second degree and burglary in the second degree.

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

Memorandum: Defendant appeals from a judgment convicting her upon a jury verdict of assault in the second degree (Penal Law § 120.05 [2]) and burglary in the second degree (§ 140.25 [2]). 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 reject defendant's contention that the verdict is against the weight of the evidence (see generally *People v Bleakley*, 69 NY2d 490, 495). The testimony of the victim and an eyewitness, combined with the compelling physical evidence recovered from defendant's apartment and the testimony of the witnesses with respect to defendant's conduct before and after the incident, amply supports the jury's verdict. The jury was entitled to credit the testimony of the victim and the eyewitness and reject that of defendant (see generally *People v Baker*, 30 AD3d 1102, 1103, lv denied 7 NY3d 846; *People v Smith*, 278 AD2d 837, 837, lv denied 96 NY2d 835). Contrary to defendant's further contention, the sentence is not unduly harsh or severe.

Entered: September 27, 2013

Frances E. Cafarell  
Clerk of the Court