

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

712

**KA 14-01095**

PRESENT: WHALEN, P.J., CARNI, LINDLEY, DEJOSEPH, AND NEMOYER, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JENNIFER L. JONES, DEFENDANT-APPELLANT.

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WILLIAMS, HEINL, MOODY & BUSCHMAN, P.C., AUBURN (RYAN JAMES MULDOON OF COUNSEL), FOR DEFENDANT-APPELLANT.

JON E. BUDELMANN, DISTRICT ATTORNEY, AUBURN (NATHAN J. GARLAND OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Cayuga County Court (Mark H. Fandrich, A.J.), rendered June 10, 2014. The judgment convicted defendant, upon her plea of guilty, of grand larceny in the fourth degree.

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

Memorandum: Defendant appeals from a judgment convicting her, upon her plea of guilty, of grand larceny in the fourth degree (Penal Law § 155.30 [1]). Contrary to defendant's sole contention on appeal, the People established the amount of restitution by a preponderance of the evidence (*see generally* § 60.27 [2]; CPL 400.30 [4]; *People v Tzitzikalakis*, 8 NY3d 217, 221), inasmuch as the sworn testimony of the employees and officers of the company that was the victim of the crime was sufficient to establish the company's out-of-pocket losses (*see People v Howell*, 46 AD3d 1464, 1465, *lv denied* 10 NY3d 841). Despite the company's lax business and accounting practices, there is "no basis to disturb the restitution award" (*People v Lucieer*, 107 AD3d 1611, 1613).

Entered: September 30, 2016

Frances E. Cafarell  
Clerk of the Court