

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D64401
ETF/afa

_____AD3d_____

Submitted - September 29, 2020

ALAN D. SCHEINKMAN, P.J.
MARK C. DILLON
LEONARD B. AUSTIN
ROBERT J. MILLER, JJ.

2015-02952

DECISION & ORDER

The People, etc., respondent,
v Alexandra Schmid, etc., appellant.

(Ind. No. 1385/12)

Howard Greenberg, Brooklyn, NY (Jonathan Rosenberg of counsel), for appellant.

Melinda Katz, District Attorney, Kew Gardens, NY (Johnnette Trail, Ellen C. Abbot, and Jessica Coalter of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Joel L. Blumenfeld, J.), rendered March 30, 2015, convicting her of grand larceny in the third degree (two counts), and criminal possession of stolen property in the third degree (two counts), after a nonjury trial, and imposing sentence.

ORDERED that the judgment is modified, on the law, by vacating the convictions of criminal possession of stolen property in the third degree, vacating the sentences imposed thereon, and dismissing those counts of the indictment; as so modified, the judgment is affirmed.

The defendant was a security officer at John F. Kennedy International Airport whose primary duty was to screen passengers' luggage. The People alleged that during the course of her duties the defendant stole property from passengers as they passed through her security checkpoint.

The defendant contends that the evidence was legally insufficient to prove her guilt of two counts of grand larceny in the third degree because no one witnessed her take the property. Viewing the evidence in the light most favorable to the prosecution (*see People v Contes*, 60 NY2d 620), we find that the evidence was legally sufficient to establish the defendant's guilt of two counts

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of grand larceny in the third degree beyond a reasonable doubt. The evidence reveals that property was taken and that the defendant was the only person with the opportunity to take it since she was the sole individual who handled the complainants' luggage (*see People v Andrea*, 141 AD2d 740). Moreover, upon the exercise of our factual review power, we are satisfied that the verdict of guilt on those counts was not against the weight of the evidence (*see CPL 470.15[5]*).

We agree with the defendant that the evidence was legally insufficient to prove her guilt of criminal possession of stolen property in the third degree (*see People v Spencer*, 257 AD2d 638).

The defendant's remaining contention is without merit.

SCHEINKMAN, P.J., DILLON, AUSTIN and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court