

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

932

KA 16-01594

PRESENT: CENTRA, J.P., CARNI, NEMOYER, TROUTMAN, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TAMMY HINES, DEFENDANT-APPELLANT.

FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (DIANNE C. RUSSELL OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (KAITLYN M. GUPTILL OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Onondaga County (John J. Brunetti, A.J.), rendered June 3, 2016. The judgment convicted defendant, upon a jury verdict, of grand larceny in the fourth degree.

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

Memorandum: On appeal from a judgment convicting her, upon a jury verdict, of grand larceny in the fourth degree (Penal Law § 155.30 [1]), defendant contends that she was denied effective assistance of counsel. We reject that contention. Defense counsel's failure to request a *Huntley* hearing, without more, does not constitute a basis for finding ineffectiveness (see *People v Williams*, 140 AD2d 969, 970 [4th Dept 1988]; see also *People v Brown*, 122 AD2d 546, 546 [4th Dept 1986], *lv denied* 68 NY2d 810 [1986]). In addition, defendant was not deprived of effective assistance of counsel based on defense counsel's failure to pursue a *Wade* hearing. Defendant failed to "demonstrate the absence of strategic or other legitimate explanations for [that] failure" (*People v Rivera*, 71 NY2d 705, 709 [1988]), particularly inasmuch as defendant's identity was established at trial directly through video surveillance evidence and, moreover, there is no indication in the record that defendant was identified in a pretrial identification arranged by the police (see *People v Pace*, 70 AD3d 1364, 1366 [4th Dept 2010], *lv denied* 14 NY3d 891 [2010]).

Although we agree with defendant that there is no basis in the record to conclude that the loss prevention officers who gave testimony identifying defendant as an individual depicted in the surveillance video were more likely to correctly identify defendant from the video than the jury (*cf. People v Brown*, 145 AD3d 1549, 1549 [4th Dept 2016], *lv denied* 29 NY3d 947 [2017]; *People v Sampson*, 289

AD2d 1022, 1023 [4th Dept 2001], *lv denied* 97 NY2d 733 [2002]), we further conclude that defendant failed to "demonstrate the absence of strategic or other legitimate explanations for counsel's alleged shortcoming[]" in failing to object to the admission of that testimony (*People v Hogan*, 26 NY3d 779, 785 [2016] [internal quotation marks omitted]; see *People v Benevento*, 91 NY2d 708, 712 [1998]).

Finally, with respect to defendant's remaining allegations of ineffective assistance of counsel, we note that the constitutional right to effective assistance of counsel "does not guarantee a perfect trial, but assures the defendant a fair trial" (*People v Flores*, 84 NY2d 184, 187 [1994]; see *People v Ford*, 86 NY2d 397, 404 [1995]). Having examined the record before us, we conclude that "the evidence, the law, and the circumstances of [this] particular case, viewed in totality and as of the time of the representation, reveal that the attorney provided meaningful representation" (*People v Baldi*, 54 NY2d 137, 147 [1981]).