



Insufficient Proof of Value of Stolen Property, Evidence of Prior Crimes Improperly Admitted, Identification Testimony Improperly Admitted, Prosecutor Improperly Vouched for Witnesses—New Trial Ordered

In reversing the defendant's grand larceny conviction, the Fourth Department determined the evidence of the value of the property was "conclusory" consisting only of "rough estimates" and was therefore legally insufficient. The court also determined evidence of uncharged crimes and identification testimony should not have been admitted, and noted the prosecutor improperly vouched for the credibility of prosecution witnesses. With respect to the uncharged crimes and identification evidence, the court wrote:

...[W]e agree with defendant that County Court erred in allowing the People to introduce evidence concerning an uncharged burglary to prove his identity as the perpetrator of the burglary and petit larceny charged in the indictment. The instant crime is "not so unique as to allow admission of evidence of the [uncharged burglary] on the theory of the similarity of the modus operandi" The court further erred in admitting the testimony of a witness who identified defendant in an out-of-court photo array procedure and thereafter identified him in court. The People failed to satisfy their obligation pursuant to CPL 710.30 inasmuch as no statutory notice was given by the People with respect to their intent to offer "testimony regarding an observation of the defendant at the time or place of the commission of the offense or upon some other occasion relevant to the case, to be given by a witness who has previously identified him as such" (CPL 710.30 [1]...). The errors in admitting evidence of the uncharged burglary and the identification of defendant are not harmless, considered singularly or in combination, inasmuch as the proof of defendant's guilt is not overwhelming, and there is a significant probability that the jury would have acquitted defendant had it not been for either of the errors... . [People v Walker, 2014 NY Slip Op 05254, 4th Dept 7-11-14](#)