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PRESENT : TANENBAUM, J.P., MOLIA and LaCAVA, JJ.  
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THE PEOPLE OF THE STATE OF NEW YORK,  
Respondent,

-against-

NO. 2010-594 S CR

DECIDED

MAY - 9 2011

STEVEN LOGUIRATO,

Appellant.  
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Appeal from a judgment of the District Court of Suffolk County, First District  
(Joseph A. Santorelli, J.), rendered March 9, 2010. The judgment convicted defendant,  
after a nonjury trial, of petit larceny.

ORDERED that the judgment of conviction is reversed, on the facts, and the  
accusatory instrument is dismissed.

In this prosecution for petit larceny (Penal Law § 155.25), defendant was  
convicted, after a nonjury trial, of stealing a shrub from his neighbor's front yard. On  
appeal, defendant contends, among other things, that the judgment of conviction was  
against the weight of the credible evidence.

"[W]eight of the evidence review requires a court first to  
determine whether an acquittal would not have been  
unreasonable. If so, the court must weigh conflicting

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testimony, review any rational inferences that may be drawn from the evidence and evaluate the strength of such conclusions. Based on the weight of the credible evidence, the court then decides whether the [trier of fact] was justified in finding the defendant guilty beyond a reasonable doubt” (People v Danielson, 9 NY3d 342, 348 [2007]).

In exercising our authority to conduct an independent review of the weight of the evidence (see CPL 470.15 [5]; People v Danielson, 9 NY3d 342), we find that an acquittal would not have been unreasonable. While we accord great deference to the trial court’s opportunity to view the witnesses, hear the testimony, and observe demeanor (see People v Mateo, 2 NY3d 383, 410 [2004]), nevertheless, we are of the opinion that the verdict of guilt of petit larceny was against the weight of the credible evidence.

The complainant and his wife based their identification of defendant on a videotape that they had possessed but which was not preserved for trial. The complainant’s testimony regarding the duration and contents of the videotape conflicted with that of his wife and that of a police officer who had also viewed it. While the police officer testified that she could not identify defendant from the videotape, the complainant’s wife stated that she had discerned defendant’s identity simply from his “gait” and “walk.” Such evidence, in our view, did not establish beyond a reasonable doubt that it was defendant who had stolen his neighbor’s shrub.

JS

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Accordingly, the judgment of conviction is reversed and the accusatory instrument dismissed. In light of our decision, we do not reach defendant's remaining contentions.

Tanenbaum, J.P., Molia and LaCava, JJ., concur.