

FIRST DIVISION
August 8, 2011

2011 IL App (1st) 092739-U
No. 1-09-2739

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 C4 41156
)	
LEATRICA HARALSON,)	Honorable
)	Carol A. Kipperman,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Lampkin concur with the judgment.

O R D E R

HELD: Where testimony and receipts containing price and merchandise information for property taken in a retail theft were admitted into evidence without objection by defendant, that evidence sufficed to establish the value of the merchandise as more than \$150, thus supporting defendant's felony conviction. Defendant's felony retail theft conviction is affirmed; the fines and fees order is modified.

¶ 1 Defendant, Leatrice Haralson, was convicted of felony retail theft (720 ILCS 5/16A-10(3) (West 2008)) in a bench trial, sentenced to 24 months' intensive probation, and ordered to complete 130 hours of community service and pay fines and fees totaling \$715. On appeal, defendant contends that her conviction should be reduced to misdemeanor retail theft because the State failed to properly establish that the property at issue was worth more than \$150. Defendant also challenges some of the fees and fines assessed against her.

¶ 2 At trial, Robert Mann testified that, on September 3, 2008, at about 8 a.m., he was working as a loss prevention agent at a Walmart store in Forest Park, Illinois. He saw defendant and two

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companions (with whom defendant was tried but who are not parties to this appeal). (The felony theft conviction of one of defendant's codefendants, Christine Ballard, has previously been upheld by this court. *People v. Ballard*, No. 1-09-2918 (2011) (unpublished order under Supreme Court Rule 23.)

¶ 3 Mr. Mann observed defendant and her companions place a silver opaque storage bin with a lid in their shopping cart. Mr. Mann estimated the size of the storage bin as two-and-a-half-feet long, 18-inches wide and 18-inches deep. The women proceeded to the ladies' department where all three of them selected a number of items of merchandise, which they placed on top of and around the container in the shopping cart. They then walked to the health and beauty department where one of the women took the top off of the container, all three placed other merchandise into the container, and the lid was put back on. The three women took the shopping cart to the checkout stand, where they paid for lotion, another item, and the storage bin itself, which was never opened. The women then left the store and went outside where Mr. Mann confronted them and identified himself. Mr. Mann took the lid off the container and saw a total of 55 items which the women had taken from the store. The women did not have a receipt for those items found in the container, so he escorted the women to the loss prevention office. Mr. Mann put the stolen merchandise to the side and summoned the police.

¶ 4 Mr. Mann testified, without objection, that he ran a register receipt for the 55 stolen items in the storage bin and determined the total value of the items to be \$422.16. Mr. Mann said the receipt, which was generated by the Walmart computer, accurately stated the prices of the merchandise as they were sold at the store on that day. The receipt included the SKU numbers of the stolen merchandise. He also took a photograph of the items. The photograph (People Exhibit 1) and the register receipt (People Exhibit 2) were introduced into evidence without objection. On cross-examination, Mr. Mann testified that, within a few days of the incident, he prepared an "asset protection case report" concerning the theft, as he did for every shoplifting or theft at the store. That

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report (Ballard Exhibit 1) listed 54 stolen items, their SKU numbers, and a general description and the value of each item. For reasons Mr. Mann could not explain, the first 10 items were crossed off the case report list. The computer-generated value for the remaining 44 items was \$338.29. The case report was introduced into evidence. However, the register receipt, the photograph, and the case report have not been included in the record on appeal.

¶ 5 Testifying on her own behalf, defendant denied any participation in the thefts. She admitted accompanying the other two women to the store, but stated that she was watching her own child and the child of one of the other two women while they were in the store. She also denied any knowledge that the other two women had stolen anything from the store.

¶ 6 To sustain a conviction for felony retail theft, the State must prove the offender took merchandise with a full retail value exceeding \$150. 720 ILCS 5/16A–10(3) (West 2008). Evidence that the stolen items were displayed, held, stored or offered for sale by a store is sufficient to establish that retail theft was committed; the State need not present the stolen items in court either physically or through photographs. See *People v. Mikolajewski*, 272 Ill. App. 3d 311, 317 (1995). The State sufficiently established defendant committed retail theft as to the merchandise stolen from Walmart in the storage bin.

¶ 7 However, defendant's primary contention is that the State failed to prove the value of the merchandise taken was over \$150 and, therefore, her felony conviction should be reduced to a misdemeanor offense of retail theft of merchandise worth \$150 or less. See 720 ILCS 5/16A–3, 5/16A–10 (West 2008). We are confronted, then, with a challenge to the sufficiency of the evidence as to the value of the stolen merchandise. In reviewing such a claim, we must view the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found that the State proved this element of the crime beyond a reasonable doubt. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). In the absence of contrary evidence, testimony as to the value of the property alleged to be stolen is proper proof of its value. *DePaolo*, 317 Ill. App. 3d at 308.

¶ 8 Mr. Mann testified he compiled a summary of the total value of the stolen merchandise by running a receipt using price information contained in the store's computer. Mr. Mann testified he created the receipt on the day defendant and her companions were arrested. The receipt included the SKU numbers of the stolen items found in the storage bin, and accurately listed the prices of the items as sold at the store that day. Mr. Mann's testimony and the receipt setting forth the SKU numbers and price information from the Walmart store's computer sufficiently established the value of the stolen merchandise as greater than \$150. Mr. Mann fully explained the process for generating the receipt, and defendant was given full opportunity to cross-examine Mr. Mann and voiced no objection to the receipt's admission. This evidence established a value of over \$150 for the stolen merchandise.

¶ 9 Defendant points out that the receipt and the report completed by Mr. Mann stated different numbers of items stolen and varying prices of the merchandise. However, both of the totals, \$422.16 and \$338.39, were well above the \$150 needed to support a conviction for felony retail theft. See 720 ILCS 5/16A–10(3) (West 2008).

¶ 10 Defendant also argues that Mr. Mann's testimony concerning the value of the merchandise was hearsay. But defendant never objected on this basis in the trial court, therefore forfeiting the objection, and allowing this evidence to be considered for its probative value. *People v. Hillier*, 237 Ill. 2d 539, 544–45 (2010); *People v. Evans*, 173 Ill. App. 3d 186, 200 (1988).

¶ 11 Citing to *People v. Mikolajewski*, 272 Ill. App. 3d 311 (1995), defendant asserts that she adopted the closing argument of a codefendant that generally contended the value element was not proven, and, thus, preserved the hearsay objection. Defendant's adoption of this general argument did not preserve the specific issues raised as to the admissibility of the receipt and the hearsay nature of Mr. Mann's testimony. In *Mikolajewski*, the defense objected to the value testimony of a store security officer as inadmissible hearsay and "vigorously argued that value had not been proven." *Mikolajewski*, 272 Ill. App. 3d at 318. Here defendant did not make any objection to the

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photograph, receipt, or the value testimony of Mr. Mann, the store's loss prevention agent. It is also noteworthy that, in *Mikolajewski*, the appellate court was concerned with an issue not raised here as to whether the trial court improperly refused defendant's request for an instruction on the lesser-included offense of misdemeanor retail theft in light of the challenge to the value of the stolen items. *Mikolajewski*, 272 Ill. App. 3d at 318. *Mikolajewski* is not persuasive.

¶ 12 Thus, we may review defendant's challenges to this evidence on appeal, only if defendant has shown plain error. *Hillier*, 237 Ill. 2d at 545. Defendant has forfeited any plain error claim by failing to make such an argument in this court. *Hillier*, 237 Ill. 2d at 545-46. For all of these reasons, we find that defendant's guilt was proven beyond a reasonable doubt.

¶ 13 Defendant also objects to some of the fines and fees assessed against her. She first objects to the \$10 "Arrestee's Medical Costs Fund" fee assessed pursuant to 730 ILCS 125/17 (West 2008). Defendant argues the fee was improper because she was not injured and there were no medical expenses as a result of her arrest. Before its amendment, 730 ILCS 125/17 provided that the fee shall be imposed on a conviction or order of supervision for a criminal violation and used "solely for reimbursement of costs for medical expenses relating to the arrestee *** and administration of the Fund." 730 ILCS 125/17 (West 2006). Even based upon that wording, this court has held that the fee can be assessed against defendants who incurred no medical expenses. See, e.g., *People v. Anthony*, 408 Ill. App. 3d 799, 812-813 (2011).¹ In any event, the statute was amended by Public Act 95-842 (eff. Aug. 15, 2008) (amending 730 ILCS 125/17 (West 2008)). The amendment changed the name of the fund from the "Arrestee's Medical Costs Fund" to the "County Jail Medical Costs Fund." As amended, the statute provides that all such fees shall be used "solely for reimbursement to the county of costs for medical expenses and administration of the Fund." The amended version applies here as defendant was charged after the effective date of the amendment.

¹Both parties represent that this issue is pending before our supreme court. *People v. Jackson, People v. Lee, petition for leave to appeal granted*, Nos. 110615 & 110702, Cons. (September 29, 2010).

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These changes in the statute undercuts defendant's argument that, because no costs for medical expenses can be attributed to her, she should not be assessed this fee. This fee therefore stands.

¶ 14 Defendant next contends, and the State concedes, that she should not have been assessed a \$5 court system fee because such a fee only applies to certain violations of the Illinois Vehicle Code. 55 ILCS 5/5-1101(a) (West 2008). Accordingly we vacate this fee.

¶ 15 Defendant challenges the \$25 fine assessed pursuant to the Violent Crime Victim Assistance (VCVA) Act. That statute provides that for any crime other than a crime of violence or a conservation offense, where no other fine is imposed, a \$20 fine shall be imposed. 725 ILCS 240/10(c)(1)(2) (West 2008). If other fines are imposed, the penalty is "\$4 for each \$40, or fraction thereof, of fine imposed." 725 ILCS 240/10(b) (West 2008). The State contends that the fine should be \$20 because no other fine was imposed on defendant. Defendant contends that the fine should be \$4 because the only other fine imposed on her was the \$10 mental health court fee. Both claims are erroneous. The following additional fines were imposed on defendant: the \$10 mental health court fee (designated a fine in *People v. Graves*, 235 Ill. 2d 244, 255 (2009)); the \$30 children's advocacy center assessment; the \$5 drug court fine (both designated as fines in *People v. Folks*, 406 Ill. App. 3d 300, 305-306 (2010)); and the \$5 youth diversion/peer court fine (designated a fine in *Graves*, 235 Ill. 2d at 255). Thus defendant was assessed a total of \$50 in fines, and using the formula of the VCVA, she should be assessed an \$8 fine under that provision.

¶ 16 Defendant also contends that certain assessments against her which were based on her conviction of a felony should be vacated because of her claim that her conviction must be reduced to a misdemeanor. We have already denied that underlying contention, so this claim need not be considered further.

¶ 17 Affirmed in part as modified;

¶ 18 vacated in part.