

2012 IL App (1st) 101945-U

SECOND DIVISION
February 7, 2012

No. 1-10-1945

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. 09 C4 41080
)	
GIOVANNI BRUSCA,)	Honorable
)	Thomas M. Tucker,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Quinn and Justice Connors concurred in the judgment.

ORDER

- ¶ 1 *Held:* Judgment entered on defendant's conviction of felony retail theft affirmed where defendant waived for review his claim that the evidence establishing the value of the stolen items was inadmissible hearsay, and evidence admitted without objection was sufficient to prove value of stolen items beyond a reasonable doubt.
- ¶ 2 Following a bench trial, defendant Giovanni Brusca was convicted of felony retail theft and sentenced to 18 months' probation. On appeal, he contends that his conviction should be reduced to a misdemeanor because the State failed to establish beyond a reasonable doubt that the value of the items taken exceeded \$150.

1-10-1945

¶ 3 The record shows that defendant was charged with felony retail theft from Home Depot for taking merchandise, which had a retail value over \$150, with the intent to permanently deprive Home Depot of the use and benefit of that merchandise. At trial, David Palmer testified that he works in the loss prevention department of Home Depot, and one of his responsibilities is to look for shoplifters.

¶ 4 At 11 a.m. on August 28, 2009, Palmer was working at the Northlake Home Depot when he saw defendant enter the store. Palmer followed defendant to the plumbing department where he saw him place a faucet in his shopping cart. He then followed defendant to the electrical department where he observed defendant place a light fixture and two faucet hoses in the cart. Defendant then exited the store through the contractor exit without paying for the items he had taken from the store or going through any cashier's line, and without permission or authority to take the items without paying for them.

¶ 5 Palmer further testified that he stopped defendant, identified himself as from loss prevention, and asked for a receipt for the merchandise. Defendant gave Palmer a receipt, which indicated the purchase of paint a week before. Palmer then asked defendant to come with him to the security office, and he complied. When Palmer told him that he was going to call police, defendant responded, "don't call, please. I pay. I pay."

¶ 6 The State showed Palmer, without any objection from the defense, exhibit number two, which Palmer identified as the receipt he rang up for the merchandise in defendant's cart which totaled \$215.88 before tax. The State also showed Palmer pictures of the items in defendant's cart which he indicated fairly and accurately reflected the way the property appeared to him on the date in question. Those pictures and the receipt, which showed that the total value of the stolen items was \$215.88, were admitted into evidence without objection.

1-10-1945

¶ 7 The defense then moved for a directed verdict asserting that the State failed to prove that defendant intended to permanently deprive Home Depot of the property in question. The motion was denied.

¶ 8 Defendant testified that after he placed the items in his shopping cart, he went to the cashier to pay for them. At that point, he realized that he did not have his wallet, and the cashier allowed him to get his money from his car. He then mistakenly left the store with the cart while going to retrieve his money, and stated that he planned to pay for the items.

¶ 9 Defendant further testified that once he was outside the store, Palmer asked him if he had paid for the items in his cart. He told Palmer that he was planning to get his money from his car and pay for the items. When Palmer told him he was going to call police, defendant asked him why, because he was going to pay for the items.

¶ 10 The court subsequently found defendant guilty of felony retail theft, and sentenced him to a term of probation. Defendant then filed a motion for a new trial, which was denied.

¶ 11 On appeal, defendant contends that the State failed to prove him guilty of felony retail theft beyond a reasonable doubt. He maintains that the State failed to establish that the value of the stolen items taken from the store exceeded \$150, and that his conviction should be reduced to a misdemeanor. In so asserting, defendant has abandoned his trial defense that the evidence was insufficient to establish the requisite intent.

¶ 12 Where, as here, defendant is charged with theft of property exceeding a certain value, the value of the stolen property is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding that value. 720 ILCS 5/16-1, 5/16A-10(3) (West 2008); *People v. Perry*, 224 Ill. 2d 312, 320 (2007). An element of an offense must, of course, be proven beyond a reasonable doubt. *People v. Furby*, 138 Ill. 2d 434, 446 (1990).

¶ 13 At the time defendant committed the offense, theft of merchandise valuing over \$150 was a felony. 720 ILCS 5/16A-3, A-10 (West 2008). Defendant maintains that "there was no

1-10-1945

substantive proof of the value" of the stolen items where the receipt for them and Palmer's testimony regarding the contents of the receipt was "hearsay." He further maintains that the State made no attempt to satisfy the criteria of the business records exception for admitting the receipt.

¶ 14 This argument, contrary to defendant contention, is not a sufficiency of the evidence question as defendant is not asserting that the alleged hearsay evidence was weak, but, rather, that there was no substantive proof of the value of the items taken because the testimony regarding the content of the receipt and the receipt itself were inadmissible hearsay. *People v. Foster*, 190 Ill. App. 3d 1018, 1025-26 (1989). Under well-settled law, however, defendant cannot raise on appeal the admissibility of evidence when he did not object to its admission at trial. *People v. Linus*, 48 Ill. 2d 349, 355 (1971), and cases cited therein. The rationale for this procedural waiver doctrine is based upon the need for timely resolution of evidentiary questions. *Linus*, 48 Ill. 2d at 355. As applied to this case, we find that defendant has waived the admissibility issue for review since he did not object to the admission of the receipt and the testimony regarding it at trial or in a post-trial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988); *Linus*, 48 Ill. 2d at 355.

¶ 15 In reaching this conclusion, we have considered *People v. Mikolajewski*, 272 Ill. App. 3d 311, 317-18 (1995), in which a felony theft conviction was reduced to a misdemeanor, and find it factually distinguishable as it involved the issue, which was affirmatively answered, of whether the trial court erred in refusing defendant's request to give the jury an instruction on the lesser included offense. Furthermore, in this case, unlike *Mikolajewski*, 272 Ill. App. 3d at 312, defendant did not vigorously oppose the admission of any hearsay evidence, but, rather, made no objection to the admission of the pictures of the stolen merchandise, the receipt showing the value of the stolen merchandise, and the testimony regarding the contents of the receipt.

¶ 16 We observe that there is no requirement that any alleged hearsay evidence that was admitted without objection be excluded in determining the sufficiency of the proof of guilt

1-10-1945

(*Furby*, 138 Ill. 2d at 453-54), and we may thus give such evidence its natural probative effect (*Foster*, 190 Ill. App. 3d at 1026, citing *People v. Collins*, 106 Ill. 2d 237, 263 (1985)).

Accordingly, to the extent defendant contends that the evidence was insufficient to prove the value of the stolen items based on Palmer's testimony alone, we observe that the pictures of the stolen merchandise, the receipt showing the value of the stolen merchandise, and the security guard's testimony regarding the contents of the receipt established that the value of the stolen merchandise exceeded \$150, and sufficiently proved him guilty of felony retail theft beyond a reasonable doubt. 720 ILCS 5/16A-3, A-10 (West 2008).

¶ 17 In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 18 Affirmed.