

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).

2012 IL App (4th) 100525-U

Filed 3/27/12

NO. 4-10-0525

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
CURTIS PROFIT,)	No. 10CF240
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Justices Appleton and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court did not err in admitting testimony from a police officer concerning a witness' account of the theft, admitting a booking photograph of defendant, and imposing a \$10 fee pursuant to the County Jail Act.

(2) The State provided sufficient evidence to prove defendant guilty beyond a reasonable doubt.

(3) The appellate court lacked jurisdiction to consider defendant's request to vacate late and collection fees.

¶ 2 Following a bench trial, defendant, Curtis Profit, was convicted of theft of property valued in excess of \$300 (720 ILCS 5/16-1(a)(1)(A) (West 2008)), a Class 3 felony (720 ILCS 5/16-1(b)(4) (West 2008)). The trial court sentenced defendant to nine years' imprisonment in the Illinois Department of Corrections. On appeal, defendant argues that his conviction must be reversed because the trial court erred by admitting hearsay testimony from a police officer,

admitting a booking photograph of defendant, and imposing a \$10 fee pursuant to section 17 of the County Jail Act (730 ILCS 125/17 (West 2010)). Defendant also argues that the State failed to present sufficient evidence to prove him guilty beyond a reasonable doubt. Last, defendant urges the court to vacate the \$42.75 late fee and \$98.33 collection fee imposed by the circuit clerk against him. We dismiss in part and affirm in part.

¶ 3

I. BACKGROUND

¶ 4 Defendant entered the Illini Apple Center (hereinafter referred to as Illini Apple) in Champaign, Illinois, around noon on February 3, 2010. William Dick, the manager of Illini Apple, recognized defendant from his prior visits to the store. He also recognized defendant's lazy eye. That day, Dick saw defendant enter Illini Apple's showroom, but he did not observe defendant in the showroom. After approximately eight minutes, Dick witnessed defendant leave the store without making a purchase.

¶ 5 Later that day, while performing a weekly store inventory, a sales associate noticed that a hard drive (Iomega Helium) was missing from the showroom and alerted Dick. The associate started the inventory before defendant entered the store. Dick testified that the last inventory was completed three days prior. Subsequently, Dick watched the store's surveillance video. From watching the video, Dick discovered that a set of headphones (Skullcandy) and a USB converter (Elgato eyeTV) were also missing from the showroom. Dick then used the store inventory and sales records to confirm the missing items. At trial, Dick testified that the retail value of the three items exceeded \$300 (\$49.95 for the headphones, \$149 for the USB converter, and \$109 for the hard drive).

¶ 6 At 3:30 p.m., Dick called the Champaign police department. Soon thereafter,

police officer John McAllister arrived at Illini Apple. He interviewed Dick and watched the surveillance video. At trial, Officer McAllister testified that Dick told him "a gentleman came in, looked kind of suspicious, was walking around. I believe the gentleman took three items and then left the store without paying for them." Defendant objected to the statement. The trial court overruled defendant's objection stating that the statement was "not for the truth of the matter asserted" but "merely to show what the officer was told and what he did after that." Officer McAllister also testified concerning a physical description of the perpetrator that he obtained from Dick, including that the perpetrator had a lazy eye.

¶ 7 According to Dick, defendant returned to Illini Apple on February 9, 2010. Dick was the only person working that day. Dick tried to notify the police without tipping off defendant, but defendant left the premises before the police arrived.

¶ 8 On February 12, 2010, defendant again entered Illini Apple. Upon seeing defendant, Dick notified another employee who promptly alerted the police. Soon thereafter, Police Officer Christopher Fowler arrived at Illini Apple. Upon entering the store, Officer Fowler was approached by defendant. He testified that defendant seemed agitated. When Officer Fowler tried to arrest defendant, a struggle ensued and defendant attempted to flee. After a couple-block foot chase, Officer Fowler caught defendant. At the time of the arrest, Officer Fowler did not find any stolen goods on defendant's person.

¶ 9 On April 14, 2010, the case proceeded to trial. Prior to jury selection, the trial court authorized the State to introduce into evidence a booking photograph of defendant taken on February 12, 2010. The court stated that the sole purpose of the booking photograph was "to allow one of the officers to say this is what [defendant] looked like when he was arrested."

¶ 10 At trial, the surveillance video was played for the jury. Dick narrated the footage. The video depicted a man, whom Dick identified as the defendant, enter Illini Apple's showroom and linger for several minutes. A store employee is present at the time the man enters the showroom. After the employee leaves the showroom, the man takes three items off a shelf and puts them into his jacket. Upon the employee's return, the man exits the store. Officer McAllister described the video as failing to produce a clear facial shot.

¶ 11 During the State's direct examination of Officer Fowler, it introduced into evidence the booking photograph of defendant. Officer Fowler testified that the booking photograph "fairly and accurately" depicted defendant's appearance on the day he was arrested. During its deliberations, the jury was allowed to review the booking photograph of defendant. On April 15, 2010, the jury found defendant guilty of theft of property valued in excess of \$300 (720 ILCS 5/16-1(a)(1)(A) (West 2008)).

¶ 12 On May 26, 2010, a sentencing hearing was held and defendant was sentenced to nine years' imprisonment in the Illinois Department of Corrections.

¶ 13 On May 27, 2010, defendant filed a motion to reconsider sentence. The trial court denied the motion.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 A. Officer McAllister's Testimony

¶ 17 On appeal, defendant argues that Officer McAllister's testimony regarding his conversation with Dick on February 3, 2010, was inadmissible hearsay and the trial court erred in admitting the testimony. Specifically, defendant points to Officer McAllister's testimony

concerning Dick's statement "that a gentleman came in, looked kind of suspicious, was walking around. I believe the gentleman took three items and then left the store without paying for them." Defendant also points to Officer McAllister's testimony concerning Dick's physical description of the perpetrator, including that he had a lazy eye. Evidentiary rulings are within the sound discretion of the trial court and will not be reversed absent an abuse of discretion. *People v. Caffey*, 205 Ill. 2d 52, 89, 792 N.E.2d 1163, 1188 (2001).

¶ 18 "Hearsay evidence is an out-of-court statement offered to prove the truth of the matter asserted, and is generally inadmissible unless it falls within an exception." *People v. Lawler*, 142 Ill. 2d 548, 557, 568 N.E.2d 895, 899 (1991). Testimony about an out-of-court statement that is used for a purpose other than to prove the truth of the matter asserted in the statement does not constitute hearsay. *People v. Williams*, 181 Ill. 2d 297, 313, 692 N.E.2d 1109, 1118 (1998). "For example, a hearsay statement is allowed where it is offered for the limited purpose of showing the course of a police investigation where such testimony is necessary to fully explain the State's case to the trier of fact." *Williams*, 181 Ill. 2d at 313, 692 N.E.2d at 1118.

¶ 19 In regard to Officer McAllister's testimony concerning Dick's description of the theft, the State argues that the trial court's ruling should be affirmed because the statement was offered for the purpose of showing the course of a police investigation. Hearsay testimony offered to show the course of a police investigation triggers a two-part test:

"The trial judge first must determine whether the out-of-court words, offered for some purpose other than their truth, have any relevance to an issue in the case. If they do, the judge then

must weigh the relevance of the words for the declared nonhearsay purpose against the risk of unfair prejudice and possible misuse by the jury. [Citation.]" *People v. Warlick*, 302 Ill. App. 3d 595, 599, 707 N.E.2d 214, 218 (1998).

The primary purpose of the testimony at issue was to recount Officer McAllister's investigatory procedure. After hearing Dick's description of the theft, Officer McAllister viewed the surveillance video. From the surveillance video, Officer McAllister obtained a physical description of the perpetrator. Moreover, defendant was not prejudiced by Officer McAllister's testimony. The same information concerning the theft was properly admitted in Dick's trial testimony. Dick testified at length concerning defendant's conduct on February 3, 2010. Further, in response to defendant's objection to the statement at issue, the trial court replied in open court that the statement was "not for the truth of the matter asserted" but "merely to show what the officer was told and what he did after that."

¶ 20 The State argues that defendant forfeited any claim arising from Officer McAllister's testimony relating Dick's physical description of the perpetrator because defendant failed to raise the issue in his posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124, 1130 (1988). In this case, regardless of any forfeiture due to defendant's failure to object, we find no error. The statutory hearsay exception for statements of identification applies. See 725 ILCS 5/115-12 (West 2008). Section 115-12 of the Code of Criminal Procedure of 1963 (Code) provides as follows:

“A statement is not rendered inadmissible by the hearsay rule if (a) the declarant testifies at the trial or hearing, and (b) the

declarant is subject to cross-examination concerning the statement, and (c) the statement is one of the identification of a person made after perceiving him.” 725 ILCS 5/115-12 (West 2008).

Each of the requirements of section 115-12 were met. Dick testified at trial and was subject to cross-examination concerning the statements at issue. Last, the statements of identification were made by Dick after perceiving defendant on the day the incident occurred.

¶ 21 B. Admissibility of the Booking Photograph

¶ 22 Defendant next argues that the trial court erred in admitting into evidence the booking photograph from his February 12, 2010, arrest. The booking photograph did not contain any criminal information or law enforcement insignia. In his brief, defendant argues that the jury might have speculated that the booking photograph was related to a prior arrest. However, at trial, the defense objected to the admission of the booking photograph asserting that the witness and jury would have "ample opportunity" to observe defendant in open court. In his posttrial motion, defendant objected to the fact that the booking photograph was taken on February 12, 2010. Defendant also claims that the court erred in allowing the jury to review the booking photograph during its deliberations.

¶ 23 A trial court's decision to submit exhibits to the jury will not be reversed absent an abuse of discretion. *People v. Robinson*, 125 Ill. App. 3d 1077, 1079, 467 N.E.2d 291, 293 (1984). "While 'mug shots' suggest other criminal activity, they may nonetheless be admitted where they are probative of the issue of defendant's identity and the manner in which an identification is made." *Robinson*, 125 Ill. App. 3d at 1079, 467 N.E.2d at 293. "Even if the

mugshots were not admissible, there is no need for a new trial unless the defendant is prejudiced." *People v. Champs*, 273 Ill. App. 3d 502, 510, 652 N.E.2d 1184, 1191 (1995).

¶ 24 Relying on *People v. Bryant*, 391 Ill. App. 3d 1072, 1078, 909 N.E.2d 391, 397 (2009), the State argues that defendant forfeited his claim that the booking photograph was prejudicial due to an inference of other criminal activity, because the grounds for objection asserted at trial have nothing to do with the grounds asserted on appeal. Regardless of forfeiture, the court did not abuse its discretion in admitting the booking photograph.

¶ 25 Defendant's argument relies on Officer Fowler's failure to explicitly state that the "photo was actually taken" on February 12, 2010. Even if ambiguity existed as to the date the booking photograph was taken, the photograph was evidence relevant to the identification of defendant, and identification was a material issue. Officer Fowler, the arresting officer, identified defendant using the photograph. However, to minimize any prejudice, the trial court prohibited the State's primary witness from identifying defendant based on the photograph. The court did not want the photograph to be used to "bolster any identification of a witness sitting here who may or may not be able to pick out the Defendant in the courtroom." The photograph also displayed defendant's lazy eye. We find that the probative value of the photograph outweighs any possible prejudicial effect.

¶ 26 C. Sufficiency of the Evidence

¶ 27 Defendant further argues that the State failed to present sufficient evidence to prove him guilty beyond a reasonable doubt. When reviewing a challenge to the sufficiency of the evidence, "the relevant question is 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of

the crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. Jackson*, 232 Ill. 2d 246, 280, 903 N.E.2d 388, 406 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). We will not reverse a conviction unless the evidence is "unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *People v. Campbell*, 146 Ill. 2d 363, 375, 586 N.E.2d 1261, 1266 (1992).

¶ 28 When viewing the evidence in the light most favorable to the prosecution, a reasonable trier of fact could have found defendant guilty of theft. Although defendant's face could not clearly be seen on the surveillance video, Dick was able to identify defendant. On February 3, 2010, Dick saw defendant enter and exit Illini Apple. Dick recognized defendant because defendant had previously visited Illini Apple without purchasing anything. He also recognized defendant's lazy eye. During his testimony, Dick connected the items stolen in the surveillance video with the three items discovered missing in the store inventory. From watching the surveillance video Dick determined what items were missing, because items were always stocked in the same location and only one of each item was on display at a time. He then used the store inventory and sales records to confirm the missing items. Dick also testified as to the systematic nature of the store's weekly inventory process. The jury could reasonably have found Dick's testimony to be credible. He was not contradicted by the evidence presented. Last, Officer Fowler testified that defendant was agitated when he arrived at the store. Moreover, when Officer Fowler tried to place defendant under arrest, a physical struggle ensued and defendant attempted to flee.

¶ 29 D. County Jail Medical Costs Fund Assessment

¶ 30 Defendant further argues that the trial court erred in imposing a \$10 County-Jail-

Medical-Costs-Fund assessment pursuant to section 17 of the County Jail Act (730 ILCS 125/17 (West 2010)), because the record contains no evidence that defendant received medical treatment following his arrest. In *People v. Jackson*, 2011 IL 110615, 925 N.E.2d 1164, the supreme court held that both the preamended (before Public Act 95-842 took effect on August 15, 2008) and amended (after Public Act 95-843 became effective) versions of section 17 impose a mandatory fee on all convicted defendants. *Jackson*, 2011 IL 110615, ¶ 23, 955 N.E.2d at 1172. The amended version of section 17 applies to this case. In light of *Jackson*, the trial court properly imposed the \$10 medical-cost assessment.

¶ 31 E. Late and Collection Fees

¶ 32 We deny defendant's request to vacate the collection and late fees assessed in the underlying case because these fees are not properly before us on direct appeal. "A notice of appeal provides a reviewing court with jurisdiction to consider only the judgments specified in the notice of appeal. [Citation]." *People v. Jake*, 2011 IL App (4th) 090779, ¶ 24, 960 N.E.2d 45, 51. Once the notice of appeal is filed, the reviewing court has no jurisdiction over matters the trial court decides after that date. *Mitchell v. Atwood Enterprises, Inc.*, 253 Ill. App. 3d 475, 478, 624 N.E.2d 878, 881 (1993).

¶ 33 In this case, defendant filed his notice of appeal on July 12, 2010. He then filed an amended notice of appeal on September 24, 2010. From a review of the record, it appears defendant was not assessed the late and collection fees until March 2011. As a result, the late and collection fees were not assessed until after defendant filed his amended notice of appeal. Accordingly, we do not have jurisdiction to consider the merits of defendant's argument and must dismiss this portion of defendant's appeal. See *Jake*, 2011 IL App (4th) 090779, ¶ 24, 960

N.E.2d at 51.

¶ 34

III. CONCLUSION

¶ 35 For the foregoing reasons, we dismiss the part of the appeal for which we lack jurisdiction. We otherwise affirm the trial court's judgment. Because the State successfully defended a portion of the criminal judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. See *People v. Smith*, 133 Ill. App. 3d 613, 620, 479 N.E.2d 328, 333 (1985) (citing *People v. Nicholls*, 71 Ill. 2d 166, 178, 374 N.E.2d 194, 199 (1978)).

¶ 36

Affirmed in part and dismissed in part.