

No. 1-12-1726

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 4558
	)	
ALLEN REYNOLDS,	)	Honorable
	)	Luciano Panici,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE LAVIN delivered the judgment of the court.  
Presiding Justice Howse and Justice Epstein concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The State proved defendant guilty of Class 2 felony theft beyond a reasonable doubt where the State presented sufficient evidence that the value of the items stolen from the subject locomotives exceeded \$10,000, as required for conviction of Class 2 felony theft. The State forfeited its argument that defendant be sentenced on the criminal damage to property count where the State failed to object to the trial court's failure to sentence on this count in the circuit court.
- ¶ 2 Following a bench trial, defendant Allen Reynolds was convicted of three counts of theft of property valued at between \$10,000 and \$100,000 (Class 2 felony), and one count of criminal damage to property between \$10,000 and \$100,000 (Class 3 felony). Defendant was sentenced

to five years' imprisonment. He appeals, contending the State did not present sufficient evidence that the value of property supporting the theft conviction did not exceed \$10,000, and therefore, this court should reduce his sentence from a Class 2 to a Class 3 felony.

¶ 3 The State presented evidence from three witnesses at defendant's trial. Officer Michael Hedgepath of the Canadian National Railroad (Railroad) police testified that at about 12:15 a.m. on January 8, 2011, he was at the Wood Crest Railroad facility, the main train yard where the Railroad repairs and maintains the locomotives, located at 17550 South Ashland Avenue in Homewood, Illinois. Hedgepath observed a vehicle that police investigation led him to believe was one of two vehicles involved in recurring burglaries at the train yard. The vehicle was located at Gladville and Maple Street; Hedgepath ran its registration through the Motor Vehicles Bureau and he learned that it belonged to co-defendant Orlando Dampier. Hedgepath contacted the Homewood Police Department. Additional police agencies also came to the scene, including the East Hazel Crest Police Department, Thornton Police Department, and several other police agents and the inspector for the railroad police. Hedgepath's investigation led him and Officer Wasik of the East Hazel Crest Police Department to the Markham yard off of Harwood Avenue. They approached in marked squad cars, exited their vehicles, and began walking towards the train engines.

¶ 4 Hedgepath observed four men, one on the lead engine – locomotive 6107; two on the second engine – locomotive 6130; and the fourth man standing further down on the train – locomotive 5956. When Hedgepath and Wasik approached the engines and identified themselves as police officers, the men jumped off of the train and fled. The first three men, defendant and Orlando and Mitchell Dampier, ran in a northwestern direction into a wooded area. The fourth person ran in a northbound direction away from the other three men. Hedgepath made an in-court identification of defendant as one of the men running from the train.

After defendant jumped from the train, Hedgepath observed copper wire that had been cut from the engines as well as “bus bars” lying on the ground. The copper wire was coiled in a circular fashion and wrapped in gray duct tape in order to be handled and carried easily. The copper was about an inch and a half thick. Hedgepath examined the locomotives and observed there were parts missing from the locomotives. He recovered wire cutters from engine 5956. When the suspects fled, Hedgepath gave chase and eventually caught defendant and placed him in custody.

¶ 5 On cross examination, Hedgepath was asked the following question about the third engine that was further down the train, locomotive 5956:

"Q. Okay. And was that third engine involved in this theft and criminal damage?

A. No, it was not. That is where the fourth suspect was located."

Hedgepath observed defendant jumping from locomotive 6130. Defendant was not holding any tools, wire cutters or duct tape, or any materials belonging to the engine, when Hedgepath saw him on the train. When defendant was apprehended, Hedgepath did not recover anything from his person.

¶ 6 Officer Locklin Jamieson testified that he also was a police officer for the Canadian National Railroad Police. He prepared the property inventory report for the items recovered from the train yard that were associated with the instant case. The items included 24 pieces of copper stranded high-tension cable in lengths ranging from 2 feet to 10 feet, and one and a half inches in diameter. He also inventoried several metal brackets. His inventory report did not indicate from which engines the materials were taken.

¶ 7 Kevin Gebhardt testified that he was the assistant manager of the locomotive repair facility. In that capacity, he oversaw train repairs in the yard. Locomotives 5956, 6130, and 6107 were functioning prior to the alleged theft and were simply being stored in the yard on the

date in question. The copper wires and bus bars that were recovered from the scene were meant to supply electricity to the locomotives. He described the extensive damage to the locomotives resulting from the copper wires and bus bars being cut from them. Gebhardt also testified that the wiring was nickel-coated copper.

¶ 8 Gebhardt further testified to the value of the items allegedly stolen from the locomotives. Locomotive 6107 was not repairable because the cost of repair would have exceeded \$10,000. The company decided to scrap the locomotive. It was sold and not repaired.

¶ 9 Without considering the labor costs to repair locomotive 5956, the cost to replace the items removed from that engine was \$10,924.00. When locomotive 6130 was initially repaired, the railroad determined that it cost \$4,827.35 to replace the stolen parts. After the initial repair, the railroad discovered that additional control wiring needed to be replaced, which cost an additional \$2,018.71 in materials.

¶ 10 Defendant did not testify; the parties rested and presented closing argument. The trial court entered a guilty finding on all charges, merging the remaining theft and criminal damage to property counts into the first count of theft to property valued at between \$10,000 and \$100,000. Defendant was sentenced to five years' imprisonment.

¶ 11 Defendant appeals, contending that the State failed to prove beyond a reasonable doubt that the value of the copper wire and bus bars removed from the locomotives exceeded \$10,000. Defendant does not challenge the sufficiency of the evidence to support a theft conviction, but rather challenges only the sufficiency of the evidence to support his conviction for the higher class felony based on the value of the property taken.

¶ 12 When a defendant challenges the sufficiency of the evidence, the relevant inquiry 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."

*Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Ross*, 229 Ill. 2d 255, 272 (2008). The reviewing court must also construe all reasonable inferences in favor of the prosecution. *People v. Bush*, 214 Ill. 2d 318, 326 (2005). The reviewing court does not retry the defendant. *Ross*, 229 Ill. 2d at 272. Rather, the trier of fact determines witness credibility, weighs testimony, and draws reasonable inferences from the evidence. *Id.* "A conviction will be reversed where the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of defendant's guilt. *Id.*; see also *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006).

¶ 13 Defendant argues that he cannot be held accountable for the damage to and theft from locomotive 5956 because Gebhardt testified that locomotive 5956 was not involved in this case. However, the trial court rejected this argument at trial when defense counsel advanced it, stating:

"However, the circumstantial evidence and the reasonable inferences derived from that circumstantial evidence is overwhelming as to why were they there. [*sic*]. Why were *four* people there. [*sic*]. They were not there for a picnic. They were there to commit a crime. \*\*\* [T]he reasonable inference is that they were there and that they ran away together [*sic*], they were caught together. So, of course, they were working together in concert because they were all caught together at the same time by the police." (Emphasis added).

During defendant's motion to reconsider or for a new trial, defense counsel again argued that 5956 was not involved in defendant's case. The trial court again rejected this argument in denying the motion. On appeal, defendant again asks that this court not consider the value of locomotive 5956. We carefully examined the record, including the single question asked of Gebhardt to which he replied that locomotive 5956 was not involved in defendant's case. We

find that, based on our review of all of the evidence in the light most favorable to the State, a rational trier of fact could conclude that locomotive 5956 was properly included in the value determination where the trial court found that all four men worked together and that defendant was accountable for their actions. See *Jackson*, 443 U.S. at 319.

¶ 14 "In the absence of contrary evidence, testimony as to the value of property alleged to be stolen is proper proof of value." *People v. DePaulo*, 317 Ill. App. 3d 301, 308 (2000); see also *People v. Cobetto*, 66 Ill. 2d 488, 491 (1977) (common sense may also be considered in determining the value of stolen goods); and *State v. Weekley*, 92 S.W.3d 327, 333 (Mo. Ct. App. 2002) (owner's testimony regarding replacement cost of stolen goods was proper for showing value where such testimony was permitted by statute).

¶ 15 Gebhardt testified that the cost of the items removed from locomotive 5956 was \$10,924.00. Moreover, Gebhardt testified that it cost \$6,846.06 to replace stolen parts from locomotive 6130, which accounts for the initially discovered \$4,827.35 in materials replacement costs, and an additional \$2,018.71 to replace additional damaged wiring. The total replacement value of the material stolen from locomotives 5956 and 6130 is \$17,770.06. Therefore, we conclude that a rational trier of fact could find that, applying common sense and considering the cost to replace the stolen locomotive parts, and even allowing for reasonable wear and tear, the value of the stolen goods was at least \$10,000, thereby supporting a Class 2 felony conviction. See 720 ILCS 5/16-1(b)(5) (West 2010).

¶ 16 We note that we did not include locomotive 6107 in our value calculation because the State presented no evidence regarding the value of the parts stolen from locomotive 6107. Gebhardt testified that locomotive 6107 was scrapped because repairing it would not have been cost-effective. He testified that the cost to repair locomotive 6107 would have exceeded \$10,000, however he did not distinguish between labor and material costs. Therefore, this court

has no evidence before it to determine the cost of materials to replace the copper wire and bus bars removed from locomotive 6107. Accordingly, we did not factor this locomotive into our analysis.

¶ 17 The State cites *People v. Dixon*, 91 Ill. 2d 346, 349, 353-54 (1982), and asks this court to remand to the trial court with directions to impose a sentence on defendant's criminal damage to property conviction under Count 4, which the State argues the court erroneously merged with the theft convictions. The State contends, for the first time on appeal, that defendant engaged in closely related but separate acts, arguing that cutting and removing the wire constituted one act and carrying away the wire constituted a separate act. Defendant argues this issue is not properly before this court because the State neither raised it in the trial court nor filed a cross-appeal.

¶ 18 The State failed to preserve the issue because it failed to object at trial or indicate in any way its disapproval of the counts' merging. See *People v. Ramos*, 339 Ill. App. 3d 891, 905 (2003). "If the State had made a timely objection, defendant would have been on notice of the State's position and defendant would have had the opportunity to decide whether he wanted to appeal, knowing that on appeal the merged offenses could be reinstated." *Id.* We reject the State's reliance on *Dixon* in support of its contention that this court remand for sentencing on the criminal damage to property guilty finding because *Dixon* carved out a narrow exception where vacation of a defendant's conviction would result in "mischievous consequences" where "crimes would go unpunished." See *Ramos*, 339 Ill. App. 3d at 905; citing *Dixon*, 91 Ill. 2d at 354. *Dixon* is inapposite here because we are affirming defendant's Class 2 felony theft conviction and, as a result, crime would not go unpunished. Defendant still stands convicted of Class 2 felony theft and his sentence stands affirmed. Accordingly, we find that the State procedurally

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defaulted its claim that this court review the trial court's decision to merge the theft and criminal damage to property counts.

¶ 19 Accordingly, the judgment of the circuit court of Cook County finding defendant guilty of theft is affirmed.

¶ 20 Affirmed.