

No. 1-12-2574

**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 20123
	)	
EUGENE TAYLOR,	)	Honorable
	)	Mary Colleen Roberts,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE CONNORS delivered the judgment of the court.  
Justices Hoffman and Delort concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's conviction for theft is affirmed where the evidence was sufficient to prove the value of the items taken and trial counsel did not render ineffective assistance.

¶ 2 Following a joint but severed bench trial, defendant Eugene Taylor and codefendant Ronnie Compton were convicted of theft for taking metal cornices valued at more than \$500 which were being installed at a Chicago public school.<sup>1</sup> The trial court sentenced defendant to

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<sup>1</sup> Codefendant Ronnie Compton's direct appeal is pending in this court under case number 1-12-2576; he is not a party to this appeal.

six years' imprisonment as a Class X offender based upon his criminal history. On appeal, defendant concedes that he was proven guilty of theft, but contends the State failed to prove that the value of the cornices was more than \$500. Defendant asserts that his conviction and sentence should be modified from a Class 2 felony to a Class 4 felony. Defendant also argues that his trial counsel rendered ineffective assistance because he failed to object to the testimony regarding the value of the cornices on hearsay and foundational grounds. We affirm.

¶ 3 Defendant and codefendant were jointly charged with one count of theft for taking "metal gutters"<sup>2</sup> valued between \$500 and \$10,000 from a Chicago public school, which is a Class 2 felony. 720 ILCS 5/16-1(a)(1), (b)(4.1) (West 2011). Because defendant concedes that he was proven guilty of theft and only challenges the value of the property taken, a full discussion of all the testimony and evidence presented at trial is not necessary. Instead, we focus our discussion on the evidence related to the value of the metal cornices. At trial, the evidence established that about 10 p.m. on November 15, 2011, four Chicago police officers saw defendant and codefendant placing metal cornices into a large yellow bin on wheels outside the Howe Elementary School. As the officers exited their squad car, the defendants ran. Police apprehended and arrested both men. After being advised of his *Miranda* rights, defendant told police that he was "just a scrapper" and was adamant that he was not engaged in a burglary. Defendant admitted that he knew the metal items were there because he had seen them earlier.

¶ 4 Walter Bidus testified that he is a foreman for Domain Corporation and supervises sheet metal workers. Domain was performing construction work installing custom-made metal

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<sup>2</sup> The charging instrument and defendant refer to the metal cornices as "gutters." The distinction is not relevant to the disposition in this case.

cornices at the Howe Elementary School. During the State's direct examination of Bidus, the following exchange occurred:

"Q. Mr. Bidus, was the Domain Corporation able to obtain an invoice or estimate of the value of the cornice work that was being used or taken at this location?

A. I did – When I arrived I asked the workers to assess how many pieces were damaged or missing. And then I called the office, and that estimate was presented to me. An estimate.

Q. Was the estimate greater than \$500?

A. Yes, it was.

Q. Do you recall the approximate value of the estimate of this cornice work?

A. It was approximately \$4,800."

On cross-examination, defense counsel referred to the cornices as "gutters" and asked if any were missing. Bidus testified that they were missing "at least six pieces and some gussets." Bidus explained that a "gusset" is a support bracket that fits on the wall and fastens the cornice to the brick. Per the court's questioning, Bidus further explained that the \$4,800 estimate was for the cornices and gussets that were missing, not the damaged materials that were still at the school.

¶ 5 The State presented five photographs taken at the scene which were admitted into evidence. Three of the photographs show the yellow bin with at least six metal cornices inside the bin, and several more cornices lying on the ground next to the bin. During his testimony, Bidus circled the cornices in the bin and on the ground in one of the photographs and testified that all of these items had been stored on the school's roof.

¶ 6 In closing argument, defense counsel asserted that the State failed to prove defendant guilty beyond a reasonable doubt because the evidence merely showed that defendant and codefendant were attempting to load the cornices into the bin, and they had not left the school grounds. Counsel argued that there was no evidence as to who removed the cornices which had been stored on the school's roof. Counsel claimed it was possible the defendants simply came across the items lying on the ground, and did not know what they were, who they belonged to, or their value. The State argued that the defendants were found in actual possession of multiple pieces of cornices.

¶ 7 The trial court found that the evidence established that both defendants knowingly exerted unauthorized control over the cornices and intended to permanently deprive the school of that property. The court further found that the cornices did not need to be removed from the school grounds to constitute the offense. Consequently, the trial court found both defendants guilty of theft. The court subsequently sentenced defendant to six years' imprisonment as a Class X offender based upon his criminal history.

¶ 8 On appeal, defendant concedes that he was proven guilty of theft, but contends the State failed to prove that the value of the cornices was more than \$500. Defendant argues that the State failed to present "any evidence whatsoever" regarding the value of the cornices found on the ground or in the yellow bin. Defendant claims the State only presented evidence regarding the value of "six metal gussets" that were missing from the site, not the metal "gutters" he was accused of taking. Defendant further argues that the State's attempt to prove the value of the cornices was improper because it lacked foundation and was inadmissible hearsay where Bidus did not have personal knowledge of the value of the cornices, but received an estimated value

when he called someone at "the office." Defendant asserts that his conviction and sentence should be modified from a Class 2 felony to a Class 4 felony.

¶ 9 The State argues that it was reasonable for the trial court to infer that the value of the cornices defendant was found in possession of was greater than \$500 when the value of six similar missing items was \$4,800. The State further argues that defendant forfeited his claim that Bidus' testimony regarding the value of the cornices was inadmissible hearsay because he did not object at trial or raise the issue in his posttrial motion. Alternatively, the State asserts that Bidus' testimony was not inadmissible hearsay.

¶ 10 Initially, we note that defendant has asserted two standards of review for this issue. First, he correctly presents the reasonable doubt standard. However, defendant then argues that the proper standard of review is *de novo* because the relevant facts and credibility of the witnesses regarding the value evidence is not in dispute. As legal authority for his assertion, defendant does not cite to a case addressing the sufficiency of the evidence, but instead, cites to a case reviewing a ruling on a motion to quash arrest and suppress evidence. See *People v. Chapman*, 194 Ill. 2d 186, 217 (2000). As no such issue is raised in this case, *Chapman* does not apply. Here, there is a factual dispute between the parties as to whether or not the State proved the value of the cornices. The value of the cornices was an element of the offense that had to be determined by the trier of fact. *People v. Rowell*, 229 Ill. 2d 82, 91 (2008). This question turned on the credibility of the witness and the inferences drawn from the evidence. Therefore, *de novo* review is not appropriate. *People v. Kibayasi*, 2013 IL App (1st) 112291, ¶ 39.

¶ 11 When defendant argues the evidence is insufficient to sustain his conviction, this court must determine whether any rational trier of fact, after viewing the evidence in the light most

favorable to the State, could have found the elements of the offense proven beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). "Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State." *People v. Baskerville*, 2012 IL 111056, ¶ 31. This standard applies whether the evidence is direct or circumstantial, and circumstantial evidence is sufficient to sustain a conviction. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). A criminal conviction will not be reversed based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010). In a bench trial, the trial court, sitting as the trier of fact, is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences therefrom. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). In weighing the evidence, the fact finder is not required to disregard the inferences that naturally flow from that evidence. *Jackson*, 232 Ill. 2d at 281.

¶ 12 Under the facts and circumstances in this case, to convict defendant of Class 2 felony theft, the State was required to prove that defendant knowingly obtained or exerted unauthorized control over "metal gutters," or cornices, that were the property of the Howe Elementary School, and were valued between \$500 and \$10,000. 720 ILCS 5/16-1(a)(1); (b)(4.1) (West 2011). The value of the property is an element of the offense which must be resolved by the trier of fact as either exceeding or not exceeding the specified value. 720 ILCS 5/16-1(c) (West 2011). It is well established that the value of stolen property is the fair cash market value at the time and place of the theft. *People v. Perry*, 224 Ill. 2d 312, 336 (2007). Absent any contrary evidence, testimony as to the worth of property is sufficient proof of its value. *People v. DePaolo*, 317 Ill. App. 3d 301, 308 (2000); *People v. Newton*, 117 Ill. App. 2d 232, 235 (1969).

¶ 13 Here, we find that Bidus' testimony that the estimated value of the missing materials was \$4,800 was sufficient to establish that the value of the cornices in defendant's possession was over \$500. As a threshold matter, it is important to note that throughout his briefs, defendant mischaracterizes Bidus' testimony regarding the missing materials. Defendant repeatedly asserts that Bidus testified that the missing materials consisted of " 'at least six' metal gussets," and the \$4,800 estimate applied only to those "six metal gussets." Defendant claims there was no testimony regarding any missing gutters. Contrary to defendant's claim, the record clearly shows that defense counsel asked Bidus if any "gutters" were missing, and Bidus replied that they were missing "at least six pieces and some gussets." In other words, at least six pieces of gutters, or cornices, were missing, and in addition those six cornices, they were also missing some gussets. Accordingly, the \$4,800 estimate was comprised of at least six metal cornices and additional gussets. We therefore find that defendant's contention that the State only presented evidence regarding the value of six gussets and failed to present "any evidence whatsoever" regarding the value of the cornices is belied by the record.

¶ 14 Bidus' testimony that the estimated value of the missing materials was \$4,800 was uncontested. Defendant did not object to that testimony, nor did he present any contrary evidence. Consequently, Bidus' testimony was sufficient to prove the value of the six missing cornices and gussets. The police saw defendant and codefendant placing metal cornices inside a large yellow bin. The photographs showed that there were at least six metal cornices inside that yellow bin, and several more cornices lying on the ground next to the bin that had been removed from the school's roof. Sitting as the trier of fact, the trial court was reasonably able to infer that if the six missing cornices and gussets were worth \$4,800, then the metal cornices in defendant's

possession were worth well over \$500. Accordingly, defendant was proven guilty beyond a reasonable doubt of Class 2 felony theft.

¶ 15 Defendant further argues that he was not proven guilty because Bidus' testimony regarding the value of the cornices lacked a proper foundation and was inadmissible hearsay. This contention is not a challenge to the sufficiency of the evidence, but instead, challenges the admissibility of the evidence. The record shows that defendant did not object to the admissibility of the value evidence on any grounds, nor did he claim the testimony was inadmissible in his posttrial motion. Defendant has therefore forfeited this claim on appeal. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988).

¶ 16 Alternatively, defendant next contends his trial counsel rendered ineffective assistance because counsel failed to object to Bidus' testimony regarding the value of the items on the grounds that it was inadmissible hearsay and lacked a proper foundation. Defendant argues that Bidus did not testify that he had any personal knowledge regarding the value of the cornices, but instead, obtained that information from someone at the construction company's office. Defendant further argues that he was prejudiced by counsel's inaction because, if counsel had objected, the value evidence would not have been admitted, and defendant would have been convicted of Class 4 felony theft rather than Class 2.

¶ 17 Claims of ineffective assistance of counsel are evaluated under the two-prong test handed down by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Henderson*, 2013 IL 114040, ¶ 11. To support a claim of ineffective assistance of trial counsel, defendant must demonstrate that counsel's representation was deficient, and as a result, he suffered prejudice. *Strickland*, 466 U.S. at 687; *Givens*, 237 Ill. 2d at 331. Specifically, defendant must show that counsel's performance was objectively unreasonable, and that there is

a reasonable probability the outcome of the proceeding would have been different if not for counsel's error. *Henderson*, 2013 IL 114040, ¶ 11. If defendant cannot prove he suffered prejudice, this court need not determine whether counsel's performance was deficient. *Givens*, 237 Ill. 2d at 331. Moreover, *Strickland* requires defendant to demonstrate actual prejudice, and mere speculation as to prejudice is not sufficient. *People v. Bew*, 228 Ill. 2d 122, 135-36 (2008) (and cases cited therein).

¶ 18 On numerous occasions, our supreme court has stated that counsel's decision "regarding 'what matters to object to and when to object' are matters of trial strategy." *Perry*, 224 Ill. 2d at 344, citing *People v. Pecoraro*, 175 Ill. 2d 294, 327 (1997) and *People v. Graham*, 206 Ill. 2d 465, 478-79 (2003). On review, counsel's decisions regarding matters of trial strategy are given a high level of deference, and every effort is made to evaluate counsel's performance from his perspective at the time of trial, rather than through hindsight. *Perry*, 224 Ill. 2d at 344.

¶ 19 Here, the record shows that trial counsel's theory of defense was that the State did not prove that defendant knowingly took the cornices because he had not left the school grounds with the items, and he may have simply come across them lying on the ground and did not know they belonged to the school. This theory was supported by the evidence that the police caught the defendants in the act of loading the cornices into the bin on the school grounds and that defendants took nothing with them when they fled. Counsel's theory was also supported by defendant's inculpatory statement to police that he was "just a scrapper" and his insistence that he was not engaged in a burglary. Based on counsel's trial strategy, his decision not to challenge the value of the cornices did not constitute ineffective assistance.

¶ 20 Furthermore, we disagree with defendant's assertion that if counsel had objected, Bidus' testimony regarding the value would not have been admitted. Bidus testified that he was a

foreman for Domain Corporation and he was in charge of Domain's crews of sheet metal workers. He further testified that Domain was engaged in the business of "architectural cornice work." It is quite likely that as a foreman in the cornice installation business, Bidus did have personal knowledge of the value of a cornice. His testimony shows that when he arrived at the school and saw the site in disarray, he asked his workers to assess how many pieces were damaged or missing, and then called Domain's office, likely to report the loss and get an estimate for the cost of replacement from the office administration. Based on Bidus' testimony, it would have been reasonable for counsel to presume that Bidus had personal knowledge of the value, and thus, there was no need to challenge his testimony. We therefore conclude that defendant has not demonstrated that counsel's decision not to object to Bidus' testimony constituted ineffective assistance.

¶ 21 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 22 Affirmed.