2016 IL App (1st) 132373-U

FIFTH DIVISION
February 5, 2016

No. 1-13-2373

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. BRICE LESLIE, Defendant-Appellant.	)))))))))))	Appeal from the Circuit Court of Cook County No. 12 CR 15202 Honorable Lawrence E. Flood, Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Gordon and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court of cook county was affirmed where: (1) the evidence was sufficient to convict defendant of Class 3 felony theft; (2) defendant failed to prove the admission of purported hearsay testimony regarding the value of the stolen property was plain error; and (3) defendant failed to prove a purported violation of his right to confront and cross-examine the witnesses against him constituted plain error.

¶ 2 Following a jury trial in the circuit court of Cook County, defendant Brice Leslie was

found guilty of Class 3 felony theft (720 ILCS 5/16-1(a)(1), (b)(4) (West 2012)) and sentenced to serve eight years in the Illinois Department of Corrections. On appeal, defendant contends: (1) his conviction must be reduced to Class 4 felony theft because the State did not sufficiently prove the value of the stolen property; (2) he was denied a fair trial by the admission of hearsay testimony regarding the value of the stolen property; and (3) he was denied the right to confront and cross-examine the witnesses against him because the State relied on hearsay testimony to establish the value of the stolen property. For the following reasons, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 On August 17, 2012, defendant was indicted on one count of felony theft. The indictment alleged that on July 29, 2012, defendant knowingly obtained or exerted unauthorized control over two steel drip pans that were the property of the "Metra Railroad" (Metra), intending to deprive Metra of the use or benefit of the property. The indictment also alleged the steel drip pans had a value exceeding $500, but not exceeding $10,000.

¶ 5 Defendant's trial commenced on June 11, 2013. Roger Lumpp (Lumpp) testified that on July 29, 2012, he resided on the fourth floor of a condominium building located on West Grand Avenue in Chicago, overlooking a Metra railroad yard. At approximately 9 a.m., Lumpp heard loud noises outside his residence. Lumpp walked to his window, from which he observed defendant pushing what appeared to be metal sheets over a concrete wall that separated the railroad yard from his condominium property. According to Lumpp, defendant was approximately 125 to 150 feet away from Lumpp's window. Lumpp retrieved his cell phone and proceeded downstairs to an alley at the rear of his condominium. Lumpp made a phone call as he was going down the stairs.

¶ 6 Lumpp further testified that he stood in the alley for approximately five minutes, but observed no one in the area. Lumpp then noticed defendant walking eastward near Grand Avenue, toward a shopping cart in the alley. Defendant pushed the shopping cart to where the steel drip pans were laying on the ground in the alley.

¶ 7 According to Lumpp, a Chicago police vehicle arrived at this time. Lumpp directed the police to defendant, who was ultimately arrested and taken into custody. Lumpp identified defendant in court. Lumpp also identified in court the steel drip pans he observed defendant push over the concrete wall.

¶ 8 Chicago police officer Henry Via (Officer Via) testified he responded to an emergency call regarding the incident at issue.[1] When Officer Via arrived, Lumpp directed him to the alley in the rear, where the officer observed defendant carrying two steel drip pans. Lumpp identified defendant, whereupon Officer Via placed defendant into custody and informed defendant of his constitutional rights.

¶ 9 Officer Via also testified that after he placed defendant in the rear of the police vehicle, he drove to the gate of the Metra railroad yard. Officer Via conversed with Metra employee William Wright (Wright) and gained admission to the railroad yard. Wright requested Officer Via to follow him in the police vehicle because Wright had an idea of the location from which the steel drip pans had been removed. As Officer Via followed Wright, defendant pointed to a location and stated "that's where I took them from." Officer Via observed similar steel drip pans resting on "skid[s]" at this location. Officer Via returned the recovered steel drip pans to Wright. Officer Via testified that while defendant was being transported to the police station, defendant informed Officer Via he sold scrap metal to support his heroin habit.

¶ 10 Wright's testimony was substantially similar to Officer Via. Wright also testified he

[1] We can infer from the record that Officer Via responded to Lumpp's call.

photographed the steel drip pans.

¶ 11 Chicago police detective Robert Smith (Detective Smith) testified he processed defendant at the police station. Detective Smith also testified he informed defendant of his constitutional rights and that defendant acknowledged those rights. According to Detective Smith, defendant stated he knew he was not supposed to be on Metra property and admitted to stealing the two steel drip pans, which he had intended to sell as scrap "for approximately $20."

¶ 12 Ron Mnichowski (Mnichowski), Metra's director in charge of mechanical operations, testified he was responsible for Metra's inventory of equipment. Mnichowski testified he read about the theft of the steel drip pans in a police report the following day on July 30, 2012. Mnichowski also testified the steel drip pans were Metra property and were fabricated at a Metra railroad yard. The purpose of the steel drip pans was to carry water from the air conditioning units on Metra trains to outside of the train cars.

¶ 13 Regarding the value of the drip pans, Mr. Mnichowski testified on direct examination as follows:

> "Q. [Prosecutor]: Now after you looked at these items and determined they were Metra property and they were these drip pans[,] were you able to determine what their value was monetarily?
>
> A. [Mnichowski]: Yes.
>
> Q. [Prosecutor]: And what was that?
>
> A. [Mnichowski]: I asked for a letter. I don't remember what it is. What I did on that day was I contacted my foreman in charge of the specialty shops where the pans are fabricated. He ascertained what the cost was with the material and what is used to make these drip pans.

Q. [Prosecutor]: Did you determine the value of the two items together to be $600?

A. [Mnichowski]: If I remember correctly, yes."

This testimony was admitted without objection.

¶ 14 On cross-examination, Mnichowski again testified regarding the value of the drip pans as follows:

"Q. [Public defender]: So you didn't actually have any first-hand knowledge of how much those were worth? You had to call someone else; is that right?

A. [Mnichowski]: Well, the knowledge I have as the foreman in charge is we have knowledge of what the stainless steel cost per sheet and the man hours it takes to build one at a time.

Q. [Public defender]: To ascertain that you didn't have personal knowledge. You had to call someone else; is that right?

A. [Mnichowski]: Can you repeat the question?

Q. [Public defender]: You didn't have personal knowledge? You had to call someone else?

* * *

A. [Mnichowski]: No, what I did is the person I went to talk to is the person who works for me as a foreman in charge of our specialty shops. I went down personally and explained to him what I needed to know cost wise, and that's how he figured it out.

Q. [Public defender]: So he figured it out not you, right?

A. [Mnichowski]: I double checked it."

Mnichowski additionally testified the steel drip pans at issue were new because Metra keeps an

inventory of one or two sets of steel drip pans available at all times and such was the situation at the time of the offense. The steel drip pans at issue had never been installed in a Metra train. This testimony was admitted without objection.

¶ 15 On redirect examination, Mnichowski testified again regarding the value of the drip pans as follows:

> "Q. [Prosecutor]: Sir, when you determine the value of these items you determined the value of the stainless steel itself, correct?
>
> A. [Mnichowski]: I determine the value of the stainless steel and man hours it takes to fabricate that piece.
>
> * * *
>
> Q. [Prosecutor]: So together between the price of the stainless steel itself and the man hours it takes to recreate these items would be $600 for the pair of them?
>
> A. [Mnichowski]: Correct."

This testimony was admitted without objection.

¶ 16 Metra employee Michael Parrilli (Parrilli) testified that prior to the time of the offense, on December 1, 2009, at approximately 9:40 p.m., he and other Metra employees observed defendant on Metra's railroad tracks. When the Metra employees announced their presence, defendant fled. After a short chase, the Metra employees apprehended defendant. Parrilli testified that defendant possessed an ounce of glue, two assembly kits, and a flat iron.

¶ 17 Defendant testified on his own behalf. He stated he sold scrap metal. According to Defendant, when Lumpp observed him, he was checking the condominium's garbage dumpster for such metal and had placed only a few cans into his shopping cart. Defendant denied removing the steel drip pans from Metra property and retrieving them in the alley. He also

testified he informed Lumpp and Officer Via they had identified the wrong person. Defendant further denied identifying the area from which the steel drip pans had been removed. He additionally denied making incriminating statements to Officer Via and Detective Smith.

¶ 18 The State introduced evidence that defendant was convicted of burglary on February 27, 2004. Following closing arguments and jury instructions, the jury deliberated and found defendant guilty of theft.

¶ 19 On July 12, 2013, defendant filed a posttrial motion for a new trial, which the court denied. Defendant did not allege any issues regarding the admission of hearsay testimony or any *Crawford* violations by the trial court in his motion. The trial court proceeded to a sentencing hearing. After hearing evidence in aggravation and mitigation of the offense, including defendant's prior criminal record, the trial court sentenced defendant to serve an extended term of eight years in the Illinois Department of Corrections. Defendant filed a motion to reconsider his sentence, which the trial court denied. That same day, defendant filed a notice of appeal to this court.

¶ 20 ANALYSIS

¶ 21 On appeal, defendant contends: (1) his conviction must be reduced to Class 4 felony theft because the State did not sufficiently prove the value of the stolen property; (2) he was denied a fair trial by the admission of hearsay testimony regarding the value of the stolen property; and (3) he was denied the right to confront and cross-examine the witnesses against him because the State relied on hearsay testimony to establish the value of the stolen property.

¶ 22 Sufficiency of the Evidence

¶ 23 When reviewing 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. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). Under this standard, a reviewing court must allow all reasonable inferences from the record in favor of the prosecution. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a court of review will not substitute its judgment for that of the trier of fact on these matters. *People v. Brooks*, 187 Ill. 2d 91, 132 (1999). This standard of review is one of great deference to the trier of fact. *People v. DePaolo*, 317 Ill. App. 3d 301, 306 (2000). Reversal is justified only where the evidence is "so unsatisfactory, improbable[,] or implausible" that it raises a reasonable doubt as to the defendant's guilt. *People v. Yates*, 98 Ill. 2d 502, 518 (1983).

¶ 24 We thus consider the essential elements of the offense of theft. A person commits theft when he or she knowingly obtains or exerts unauthorized control over property of the owner. 720 ILCS 5/16-1(a)(1) (West 2012). "Depending on the value of the stolen property and other facts, the crime of theft may be punished as a Class A misdemeanor, a Class 4, 3, 2, or 1 felony, or a Class X felony." *People v. Perry*, 224 Ill. 2d 312, 320 (2007) (citing 720 ILCS 5/16-1(b) (West 2000)). Theft of property exceeding $500 and not exceeding $10,000 in value is a Class 3 felony. 720 ILCS 5/16-1(b)(4) (West 2012). A person who has been convicted of theft of property not exceeding $500 in value and who has previously been convicted of any type of theft is guilty of a Class 4 felony. 720 ILCS 5/16-1(b)(2) (West 2012).

¶ 25 When a charge of theft of property exceeding a specified value is brought, the value of the property involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the specified value. *Perry*, 224 Ill. 2d at 320; 720 ILCS 5/16-1(c)

(West 2012). In sum, in order to convict defendant of Class 3 felony theft, the State is required to prove the following elements: (1) defendant knowingly obtained or exerted unauthorized control over the steel drip pans; and (2) the value of the steel drip pans exceeded $500 but did not exceed $10,000. 720 ILCS 5/16-1(a)(1) (West 2012); 720 ILCS 5/16-1(b)(4) (West 2012).

¶ 26 Defendant does not contest whether he knowingly obtained or exerted unauthorized control over the steel drip pans. Defendant argues, however, the State failed to prove the value of the stolen steel drip pans necessary to establish a Class 3 felony, and thus his conviction must be reduced to Class 4 felony theft. "It is well-settled law that the value of stolen property is the fair cash market value at the time and place of the theft." *Perry*, 224 Ill. 2d at 336. Generally, " '[o]riginal or replacement cost is not the standard for assessing value, although evidence of cost together with evidence concerning age, condition, and utility of the stolen item may afford a basis for determining value.' " *People v. Foster*, 199 Ill. App. 3d 372, 392 (1990) (quoting *People v. Langston*, 96 Ill. App. 3d 48, 54 (1981)). The State need not prove the exact dollar value of the property taken in a theft, but need only establish that the fair cash market value of the property at the time of the theft exceeds the sum necessary in order to sustain a particular conviction of felony theft. See *People v. Davis*, 132 Ill. App. 3d 199, 203 (1985). "The opinion testimony of one who has sufficient knowledge of the property and its value to give a reasonable estimate, received without objection, is sufficient, in the absence of contrary evidence, to establish value." *People v. Harden*, 42 Ill. 2d 301, 305-06 (1969). Indeed, where the evidence of value is uncontroverted, a general description of the property may suffice, despite the lack of evidence that the property was not affected by obsolescence, depreciation or deterioration. See *id*. at 306 (evidence adequately established a fair cash market value, where uncontroverted evidence described a ring as containing diamonds of a "nice size," despite lack of evidence that

the ring was not affected by obsolescence, depreciation, or deterioration). Furthermore, where there was no market for the property at the relevant time and place, "anyone who has some knowledge of the value of such article at the time and place where it was stolen may give his opinion of such value." *People v. Herring*, 396 Ill. 364, 369-70 (1947).

¶ 27 In this case, defendant contends Mnichowski testified only regarding the cost of the steel drip pans, rather than their fair cash market value. Defendant's argument overlooks that the steel drip pans were a specialty item, manufactured by Metra for use by Metra. The record thus established there was no or a limited market for the steel drip pans. See *Herring*, 396 Ill. at 369 (where there is proof that at the time and place where the property was stolen, few, if any, were changing hands, it is evidence there was no market for the property). Accordingly, anyone with some knowledge of the articles at the time and place of the offense could offer an opinion of their value. *Id*. at 369-70. Here, Mnichowski testified that as Metra's director in charge of mechanical operations, he had "knowledge of what the stainless steel cost per sheet and the man hours it takes to build one at a time." Moreover, Mnichowski testified the steel drip pans were new. Mnichowski's testimony regarding the value of the property was admitted without objection. In addition, the record included photographs of the drip pans, depicting their general condition at the time of the offense. Given the totality of the evidence adduced at trial, the evidence is sufficient to establish the value of the stolen property. See *id.* at 370.

¶ 28 Defendant also contends Mnichowski's testimony was "rank hearsay," and thus the State did not sufficiently prove the value of the stolen property by relying on it. Defendant maintains Mnichowski had no personal knowledge of the value of steel drip pans and he merely relied upon the information supplied to him by his foreman.

¶ 29 An out-of-court statement is hearsay and thus subject to the limits of the hearsay rule if it

is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Ill. R. Evid. 801(c) (eff. Jan. 1, 2011); *People v. Leach*, 2012 IL 111534, ¶ 66. The term "statement" includes written as well as oral assertions. Ill. R. Evid. 801(a) (eff. Jan. 1, 2011). Defendant, however, failed to object to Mnichowski's testimony at trial. Even assuming for the sake of argument that Mnichowski's testimony was hearsay, such evidence admitted without objection may be given its natural probative effect. *People v. Foster*, 190 Ill. App. 3d 1018, 1026 (1989). Generally, "[q]uestions regarding the knowledge of a witness in valuing property go toward the weight of the evidence, not its competency." *DePaolo*, 317 Ill. App. 3d at 309. If a witness' testimony regarding the value of the property is properly before the trial court and is not contradicted, the testimony would be sufficient to establish the value of the property. *Id.* at 308. The evidence of value was uncontroverted in this case. Thus, the jury was entitled to consider and weigh Mnichowski's testimony, as well as the evidence of the condition of the steel drip pans, in determining the value of the items. Viewing the evidence in the light most favorable to the prosecution, we find the evidence was sufficient to allow a reasonable trier of fact to have found the element of value was proved beyond a reasonable doubt. *Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson*, 443 U.S. at 318-19).

¶ 30 Hearsay under Plain Error

¶ 31 The State initially argues that defense counsel invited the purported error in this case by cross-examining Mnichowski regarding his lack of personal knowledge of the value of the steel drip pans. "[A] defendant's invitation or agreement to the procedure later challenged on appeal 'goes beyond mere waiver.' " *People v. Harvey*, 211 Ill. 2d 368, 385 (2004) (quoting *People v. Villarreal*, 198 Ill. 2d 209, 227 (2001)). "That is, '[u]nder the doctrine of invited error, an

accused may not request to proceed in one manner and then later contend on appeal that the course of action was in error.' " *Harvey*, 211 Ill. 2d at 385 (quoting *People v. Carter*, 208 Ill. 2d 309, 319 (2003)). "Illinois courts have applied the invited error doctrine in numerous cases to bar a defendant from claiming error in the admission of improper evidence where the admission was procured or invited by the defendant." *Harvey*, 211 Ill. 2d at 386 (and cases cited therein).

¶ 32 The record, here, establishes Mnichowski testified on direct examination that he requested a letter regarding the value of the items. He then discussed the matter with his foreman in charge of the specialty shops, and "double checked" the value of the steel drip pans using the information the foreman provided him. Accordingly, we conclude defense counsel did not invite the purported error.

¶ 33 We now turn to address defendant's contention that the State's reliance on Mnichowski's hearsay testimony regarding the value of the stolen items was an evidentiary error that denied him a fair trial. Defendant acknowledges he failed to properly preserve the error for our review by failing to object at trial or raise the issue in his posttrial motion. *People v. Vesey*, 2011 IL App (3d) 090570, ¶ 14. Defendant claims, however, we should review the issue under the plain-error doctrine. 134 Ill. 2d R. 615(a); *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005).

¶ 34 Illinois Supreme Court Rule 615(a) allows courts of review to by-pass the rules of forfeiture to note “[p]lain errors or defects affecting substantial rights[.]” *People v. Eppinger*, 2013 IL 114121, ¶ 18. Under Illinois’ plain-error doctrine, this court may address unpreserved errors "when either (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence." See *Herron*, 215 Ill. 2d at 187. The plain-error doctrine is intended to ensure a defendant receives a fair trial, but it does not guarantee every defendant a perfect trial. *People v. Johnson*, 238 Ill. 2d 478, 484 (2010). Rather

than operating as a general savings clause, it provides a narrow and limited exception to the general rule of procedural default. *Id*. The burden of persuasion remains with the defendant under both prongs of the plain-error test. *People v. Lewis*, 234 Ill. 2d 32, 43 (2009). If the defendant fails to meet his burden, the procedural default will be honored. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). The ultimate question of whether a forfeited claim is reviewable as plain error is a question of law reviewed *de novo*. *Johnson*, 238 Ill. 2d at 485.

¶ 35 Generally, the first step of plain-error review is to determine whether a clear or obvious error occurred. *In re M.W.*, 232 Ill. 2d 408, 431 (2009) (unpreserved error will not be "noticed" under Rule 615(a) unless it is "clear or obvious"). The burden of establishing a clear or obvious error rests with defendant. *People v. Ramirez*, 2013 IL App (4th) 121153, ¶ 73. Further, admissibility of evidence is within the discretion of the trial court, and its ruling will not be reversed unless there has been an abuse of discretion. *People v. Williams*, 181 Ill. 2d 297, 313 (1998). An abuse of discretion occurs when the judge's ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view. *People v. Robertson*, 312 Ill. App. 3d 467, 469 (2000).

¶ 36 A review of the record discloses Mnichowski's testimony regarding the value of the steel drip pans was not hearsay nor based on hearsay. Although Mnichowski testified he communicated with his foreman regarding the value of steel drip pans, he did not expressly testify to the contents of the foreman's statements. Moreover, Mnichowski's testimony does not establish that his opinion of the value of the steel drip pans was based on hearsay. On this point, a comparison of *People v. Mikolajewski*, 272 Ill. App. 3d 311 (1995) with *DePaolo* is instructive. In *Mikolajewski*, the defendant was convicted of felony retail theft. *Mikolajewski*, 272 Ill. App. 3d at 314. In order to prove the value of the stolen property necessary to establish a felony, the

State relied solely on the testimony of a department store security officer. *Id*. at 313-14. The security officer testified she had observed price tags attached to the stolen merchandise reflecting a total retail price of $419.96. *Id*. at 313. The State did not produce the price tags at trial. *Id*. at 314. The appellate court reduced the defendant's conviction to a misdemeanor after concluding the security officer's testimony regarding value was inadmissible hearsay. *Id*. at 318. The *Mikolajewski* court reasoned the security officer "had no real knowledge of how or why the price tags were placed on the packages." *Id*.

¶ 37 In *DePaolo*, the defendant similarly was found guilty of felony retail theft. *DePaolo*, 317 Ill. App. 3d at 302-03. The *DePaolo* court, however, distinguished *Mikolajewski*, as the testimony regarding the retail value of the stolen merchandise was provided by a department store manager who had knowledge of the prices of the merchandise. See *id*. at 308-09. The *DePaolo* court also observed the defendant failed to object to the manager's testimony and failed to cross-examine the manager on his knowledge of the value of the items at trial. *Id*. at 309. The *DePaolo* court found the trial court did not abuse its discretion when it admitted the manager's testimony. *Id*. The *DePaolo* court concluded the defendant was not entitled to a reversal of his conviction on the ground that it was error to admit the testimony. *Id*.

¶ 38 In this case, Mnichowski, as Metra's director in charge of mechanical operations, testified he was responsible for Metra's inventory of equipment. Mnichowski consulted with his foreman, and "double checked" the value of the steel drip pans using the information the foreman provided him. Such testimony may refer to performing arithmetic or may also refer to a personal examination of the price of the stainless steel and the labor involved in fabricating the steel drip pans. Indeed, on redirect examination, Mnichowski ultimately testified he determined the value of the stainless steel and the man-hours needed to fabricate a steel drip pan.

¶ 39 Moreover, as previously noted, where there was no market for the property at the relevant time and place, "anyone who has some knowledge of the value of such article at the time and place where it was stolen may give his opinion of such value." *Herring*, 396 Ill. at 369-70. As previously discussed, the steel drip pans were a specialty item and there was no market for the steel drip pans. See *Herring*, 396 Ill. at 369. Accordingly, Mnichowski, who had personal knowledge of the cost of stainless steel per sheet and the man-hours needed to build each sheet, could offer an opinion of their value. See *id*. at 369-70.

¶ 40 Questions regarding the knowledge of a witness in valuing property go toward the weight of the evidence, not its competency. *DePaolo*, 317 Ill. App. 3d at 309. Based on this record, we conclude the trial court did not abuse its discretion when it admitted Mnichowski's testimony regarding the value of the items that are at issue. Defendant is not entitled to a reduced conviction on the ground that it was error to admit the testimony. Because no error occurred, defendant's claim of plain error fails. *People v. Theis*, 2011 IL App (2d) 091080, ¶ 34.

¶ 41 *Crawford* Error under Plain Error

¶ 42 Lastly, relying on *Crawford v. Washington*, 541 U.S. 36 (2004), and its progeny, defendant argues he was denied his rights to confront and cross-examine the witnesses against him because the State relied exclusively on hearsay testimony to prove the value of the steel drip pans. Defendant again acknowledges he failed to object to Mnichowski's testimony at trial or raise this issue in his posttrial motion, which would ordinarily result in forfeiture of the issue on appeal. See *Vesey*, 2011 IL App (3d) 090570, ¶ 14. Defendant seeks review of the issue under the plain-error doctrine. See *Herron*, 215 Ill. 2d at 186-87.

¶ 43 As previously discussed, we first look to see whether a clear or obvious error occurred. *In re M.W.*, 232 Ill. 2d at 431. The burden of establishing a clear or obvious error rests with

defendant. *Ramirez*, 2013 IL App (4th) 121153, ¶ 73. "Our review is *de novo* because a defendant's claim that his sixth amendment right to confront a witness against him was violated presents a question of law." *Leach*, 2012 IL 111534, ¶ 64.

¶ 44 Under the sixth amendment, a criminal defendant has the right to be confronted with the witnesses against him. U.S. Const., amend. VI. In *Crawford*, the United States Supreme Court held the confrontation clause prevents a "testimonial" hearsay statement of a declarant from being admitted against a criminal defendant, unless the declarant is unavailable to testify and the defendant had a prior opportunity to cross-examine the declarant. *Crawford,* 541 U.S. at 53-54. Resolution of a *Crawford* claim requires a court to determine: (1) whether the out-of-court statement was hearsay; (2) if hearsay, whether the statement was admissible under an exception to the hearsay rule; (3) if admissible hearsay, whether the statement was testimonial in nature; and (4) if testimonial hearsay, whether admission of the statement was reversible error. *Leach*, 2012 IL 111534, ¶ 63.

¶ 45 As previously noted, a review of the record on appeal discloses Mnichowski's statement regarding the value of the steel drip pans was not hearsay nor based on hearsay. Mnichowski did not expressly testify to the contents of the foreman's statements. Moreover, his testimony did not establish that his opinion of the value of the steel drip pans was based on hearsay. On redirect examination, Mnichowski testified he determined the value of the stainless steel and the man-hours needed to fabricate a steel drip pan. Although defense counsel cross-examined Mnichowski regarding his personal knowledge of the value of the items, there was no inquiry of Mnichowski's determination of the cost of materials and labor.

¶ 46 The burden of establishing a clear or obvious error rests with defendant. *Ramirez,* 2013 IL App (4th) 121153, ¶ 73. The record establishes Mnichowski's determination regarding the

value of the steel drip pans was not hearsay nor based on hearsay. Thus, we conclude defendant has failed to establish a clear or obvious *Crawford* error. Consequently, defendant's claim of plain error fails in this case.[2] *Theis*, 2011 IL App (2d) 091080, ¶ 34.

¶ 47 CONCLUSION

¶ 48 For all of the aforementioned reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 49 Affirmed.

[2] Defendant also asserted in passing, without citation to authority, that the error was exacerbated by the State's emphasis on Mnichowski's testimony during closing argument. The failure to cite authority in support of the argument results in waiver on appeal (see Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); Ill. S. Ct. R. 612(i) (eff. Feb. 6, 2013) (noting that the provisions of Rule 341 is applicable to criminal cases)), but would have failed in any event, based on our disposition of the merits of the appeal.