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2014 IL App (3d) 120982-U

Order filed September 17, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-12-0982
	)	Circuit No. 12-CF-505
SHAWN MOORE,	)	
Defendant-Appellant.	)	Honorable Richard C. Schoenstedt, Judge, Presiding.

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PRESIDING JUSTICE LYTTON delivered the judgment of the court.  
Justices Carter and Wright concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Sufficient notice was provided to defendant that the offense would be enhanced from a Class A misdemeanor to a Class 4 felony as a result of a prior conviction, where indictment (1) specified that defendant was charged with a Class 4 felony, (2) included reference to statutory provision rendering the offense a Class 4 felony, and (3) included reference to defendant's previous conviction.

¶ 2 Defendant, Shawn Moore, was charged by indictment with retail theft. 720 ILCS 5/16-25(a)(1), (f)(2) (West 2012). Following a bench trial, defendant was found guilty and sentenced to an extended term of five years' imprisonment. Defendant appeals, arguing that the indictment

failed to provide him with proper notice under section 111-3(c) of the Code of Criminal Procedure of 1963 (Code). See 725 ILCS 5/111-3(c) (West 2012). We affirm.

¶ 3

### FACTS

¶ 4

On March 15, 2012, defendant was charged by indictment with retail theft (720 ILCS 5/16-25(a)(1), (f)(2) (West 2012)). The indictment read as follows:

"[O]n or about March 4, 2012, at and within Will County, Illinois, SHAWN MOORE, a male person, committed the offense of:

#### RETAIL THEFT (Class 4 Felony)

[I]n that said defendant, having previously been convicted of Identity Theft under docket number 2005CR169510 in the Circuit Court of Cook County, knowingly took possession of certain merchandise offered for sale in a retail mercantile establishment, Home Depot, located at 3001 Plainfield Road, Joliet, Will County, Illinois, being Dremel cutting wheels, with the intention of depriving the merchant permanently of the possession of such merchandise, without paying the full retail value of said merchandise, in violation of Chapter 720, Section 5/16-25(a)(1) and Section 5/16-25(f)(2), of the Illinois Compiled Statutes, 2012[.]"

¶ 5

A bench trial commenced on September 17, 2012. After calling two witnesses, the State introduced into evidence People's Exhibit No. 2, a certified copy of defendant's prior conviction for identity theft.

¶ 6

Defendant was found guilty, and the matter proceeded to sentencing on November 19, 2012. The court sentenced defendant to an extended term of five years' imprisonment, with a one-year term of mandatory supervised release. Defendant appealed immediately following

sentencing, and no motion to reconsider the sentence was filed.

¶ 7

#### ANALYSIS

¶ 8

Defendant argues that the State failed to meet the notice requirements of section 111-3(c) of the Code (725 ILCS 5/111-3(c) (West 2012)). Specifically, defendant contends that the charge failed to state that defendant had committed a Class A misdemeanor for which the State intended to seek an enhanced sentence. Defendant's argument requires us to interpret that statute. Matters of statutory interpretation are questions of law subject to *de novo* review. *People v. Davison*, 233 Ill. 2d 30 (2009).

¶ 9

We also note at the outset that defendant failed to properly preserve this issue for review, as neither a contemporaneous objection nor a postsentencing motion raising the issue was made. See *People v. Hillier*, 237 Ill. 2d 539 (2010). This failure, however, will not preclude us from reviewing the issue. When a sentence is imposed which does not conform to statutory requirements, as defendant argues here, the sentence is void, and may be challenged at any time. *People v. Arna*, 168 Ill. 2d 107 (1995).

¶ 10

Section 111-3(c) of the Code requires that the State give notice to a defendant when the State seeks to enhance a sentence due to a prior conviction. 725 ILCS 5/111-3(c) (West 2012). Specifically, the statute requires that, when seeking such an enhancement, "the charge shall also state the intention to seek an enhanced sentence and shall state such prior conviction *so as to give notice to the defendant*." (Emphasis added.) 725 ILCS 5/111-3(c) (West 2012).

¶ 11

A conviction of retail theft, when the value of the property taken does not exceed \$300, is generally a Class A misdemeanor. 720 ILCS 5/16-25(f)(1) (West 2010). However, when a person convicted of retail theft has been previously convicted of one of the offenses enumerated in the retail theft statute, the retail theft is enhanced to a Class 4 felony. 720 ILCS 5/16-25(f)(2)

(West 2010). Those enumerated offenses are: "any type of theft, robbery, armed robbery, burglary, residential burglary, possession of burglary tools, home invasion, unlawful use of a credit card, or forgery." 720 ILCS 5/16-25(f)(2) (West 2010). Because of defendant's prior identity theft conviction, he was eligible for this enhancement.

¶ 12 The indictment in this case provided defendant with sufficient notice that he was being charged with a Class 4 felony. The indictment labeled the charge for retail theft as a Class 4 felony, included the statutory provision under which defendant was eligible to be charged with such a felony, and provided reference to the prior conviction that gave rise to enhancement eligibility. There is little more the State could have done to ensure that defendant was on notice.

¶ 13 In arguing that the State's indictment did not comport with the notice requirements of section 111-3(c), defendant points to two cases in which the first district found notice to be insufficient. In both *People v. Pryor*, 2013 IL App (1st) 121792, and *People v. Whalum*, 2012 IL App (1st) 110959, the court found that the State did not fulfill its section 111-3(c) requirements where the charging instruments did not say what class of offense with which the State was charging the defendants.<sup>1</sup> These cases are thus distinguishable from the matter at hand in that the State here made it clear what class of offense with which defendant was charged.

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<sup>1</sup> These cases have recently been called into question by our supreme court's decision in *People v. Easley*, 2014 IL 115581. There the court held that the requirements of section 111-3(c) do not apply "when the prior conviction is a required element of the offense." *Id.* ¶ 19. Because we find that the notice provided in the case at hand satisfied the section 111-3(c) requirements, we need not decide if the prior conviction can be characterized as a required element of Class 4 retail theft.

¶ 14 Defendant argues that the State's indictment fails to provide a "statement" that the State would be seeking the enhanced charge. The word "state" in section 111-3(c), defendant contends, must be given meaning, as a matter of statutory interpretation. Such a construction would significantly elevate form over substance. Indeed, we can think of no better way for the State to "state" its intention to charge defendant with the Class 4 felony than by explicitly labeling the offense as a Class 4 felony.

¶ 15 Because we find that the State properly satisfied the requirements of section 111-3(c), we must affirm.

¶ 16 CONCLUSION

¶ 17 The judgment of the circuit court of Will County is affirmed.

¶ 18 Affirmed.