FIRST DIVISION
May 16, 2011

No. 1-09-2918

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 C 441156
	)	
CHRISTINE BALLARD,	)	The Honorable
	)	Carol A. Kipperman,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Lampkin concur with the judgment.

O R D E R

HELD: Where receipt containing price and merchandise information was entered into evidence without objection, receipt was sufficient to establish value of stolen merchandise at more than $150; defendant waived review of any error as to the admissibility of the receipt; defendant's conviction for felony retail theft was affirmed, and fines and fees order was modified.

Following a bench trial, defendant, Christine Ballard, was convicted of felony retail theft and sentenced to 24 months of probation. On appeal, defendant contends her conviction should be reduced to misdemeanor retail theft because the State did not establish that the value of the stolen merchandise was in excess of $150. Defendant also seeks correction of the trial court's order imposing various fines and fees. We affirm in part and vacate in part.

At trial, loss prevention officer, Robert Mann, testified that he was working at a Wal-Mart store in Forest Park, Illinois. On September 3, 2008, Mr. Mann observed defendant and two companions (with whom defendant was tried but who are not parties to this appeal), in the store. Defendant and her companions placed a silver opaque plastic storage bin with a lid in their shopping cart. Mr. Mann estimated the storage bin was two-and-a-half-feet long, 18-inches wide and 18-inches deep.

Mr. Mann observed defendant and her companions place clothing and health and beauty items inside the storage bin, then close the lid. At the checkout, defendant and her companions paid for lotion, another item, and the storage bin itself and left with those items. They also left with the Wal-Mart merchandise in the storage bin that they had not paid for during their transaction. Mr. Mann stopped defendant and her companions after they left the store. They did not have a receipt for the merchandise which was hidden in the storage bin. Mr. Mann brought defendant and her companions and the stolen merchandise to the store security office. Mr. Mann put the stolen merchandise to the side and called the Forest Park police.

Mr. Mann testified he ran a register receipt of the 55 stolen items in the storage bin to determine their total value, which was $422.16. Mr. Mann said the receipt, which was generated by the Wal-Mart computer, accurately stated the prices of the merchandise as they were sold at the store on that day. The receipt also included the SKU numbers of the stolen merchandise. Mr. Mann also took a photograph of the stolen merchandise. The photograph (People exhibit 1) and receipt (People exhibit 2) were entered into evidence at trial without any objection. Mr. Mann testified as to the receipt without objection as to hearsay or foundation.

On cross-examination, Mr. Mann stated he also created an "asset protection case report" (Ballard exhibit 1) within a few days of the incident. The "asset protection" report, which was shown to Mr. Mann in court, listed 54 stolen items, but 10 items had been crossed out. The report included the SKU number, general description and value of each item. The report indicated the value of the remaining 44 items was $338.39. Mr. Mann said he did not know why certain items had been crossed out on the report or who had done this. Additionally, he testified that such a report was created by Wal-Mart after each shoplifting or retail theft case. The receipt, the report and the photograph of the merchandise were not included in the record on appeal.

On appeal, defendant argues that Mr. Mann's testimony as to the total value listed in (People exhibit 2) the receipt was insufficient to establish the value of the stolen merchandise. Defendant contends the State should have produced individual pictures of the stolen merchandise, as opposed to a group photograph. Defendant also argues the State failed to properly lay the foundation for the receipt. Defendant asks that we reduce her conviction from a felony to a misdemeanor.

Defendant's appeal raises the issue of whether the evidence was sufficient to sustain her conviction for felony retail theft. Defendant also challenges the admissibility of certain evidence relating to the value of the stolen merchandise. Defendant's argument notwithstanding, the standard of review here is whether, viewing the evidence in the light most favorable to the State, any rational trier of fact would have found the essential elements of the crime had been established beyond a reasonable doubt. See *People v. DePaolo*, 317 Ill. App. 3d 301, 306 (2000). Furthermore, evidentiary rulings are reversed only upon a showing of an abuse of discretion. *DePaolo*, 317 Ill. App. 3d at 308.

To sustain a conviction for felony retail theft, the State must prove the offender took merchandise with a full retail value exceeding $150. 720 ILCS 5/16A-10(3) (West 2008). Evidence that the stolen items were displayed, held, stored or offered for sale by a store is sufficient to establish that retail theft was committed; the State need not present the stolen items in court either physically or through photographs. See *People v. Mikolajewski*, 272 Ill. App. 3d 311, 317 (1995). The State sufficiently established that defendant committed retail theft as to the merchandise stolen from Wal-Mart in the storage bin.

Additionally, in the absence of contrary evidence, testimony as to the value of the property alleged to be stolen is proper proof of its value. *DePaolo*, 317 Ill. App. 3d at 308. Here, Mr. Mann testified he compiled a summary of the total value of the stolen merchandise by running a receipt using price information contained in the store's computer. Mr. Mann testified he created the receipt on the day defendant and her companions were arrested. The receipt included the SKU numbers of the stolen items and accurately listed the prices of the items as sold at the store that day. Mr. Mann's testimony and the receipt setting forth the SKU numbers and price information from the Wal-Mart store's computer sufficiently established the value of the stolen merchandise as greater than $150. We find that the trial court did not abuse its discretion in admitting the receipt into evidence where Mr. Mann fully explained the process for generating the receipt, and defendant was given full opportunity to cross-examine Mr. Mann and voiced no objection to the receipt's admission.

Although defendant now contends no foundation was laid to admit the price information in the form of the receipt into evidence, the defense raised no objection at trial to the admission of or lack of the foundation as to the receipt. Defendant did not raise any issue as to the admissability

or foundation of the receipt in her post-trial motion. "It is fundamental that the failure to make a timely objection to the admission of allegedly improper evidence constitutes a waiver for purposes of review and that hearsay evidence admitted without objection may be considered and given its natural probative effect." *People v. Evans*, 173 Ill. App. 3d 186, 200 (1988). Defendant, by failing to object and raise these issues in a post-trial motion, has waived her arguments as to the admissibility of or lack of foundation as to the receipt or admissibility of Mr. Mann's testimony relating to the value of the stolen items. See *People v. Hillier*, 237 Ill. 2d 539, 547-48 (2010). We may review defendant's objections to this evidence only if defendant has shown plain error. *Hillier*, 237 Ill. 2d at 545. However, defendant has not argued plain error and, thus, has forfeited plain error review. *Hillier*, 237 Ill. 2d at 545.

Defendant's citing *Mikolajewski*, argues that she preserved the issue as to the receipt's admissibility and lack of foundation through closing argument. Defendant adopted the closing argument of a co-defendant that generally contended the State had not met it's burden of establishing that the value of the stolen merchandise exceeded $150. This general argument did not preserve the specific issues now raised as to the receipt. We are not persuaded by defendant's citation to *Mikolajewski* as to waiver.

Defendant points out that the receipt and the report completed by Mr. Mann stated different numbers of items stolen and varying prices of the merchandise. However, both of the totals, $422.16 and $338.39, were well above the $150 needed to support a conviction for felony retail theft. See 720 ILCS 5/16A-10(3) (West 2008). The evidence was sufficient to support defendant's conviction for felony retail theft.

Defendant's remaining contentions involve various fines and fees assessed upon her conviction. First, defendant argues, and the State correctly concedes, the $5 court system fee imposed under section 5-1101(a) of the Counties Code (55 ILCS 5/5-1101(a) (West 2008)) should be vacated because that fee is assessed only for a violation of the Illinois Vehicle Code or a similar provision. We therefore vacate the $5 court system fee.

Defendant also argues the $25 fee assessed under the Violent Crime Victim Assistance (VCVA) Act was incorrectly calculated. That statute states:

> "When any person is convicted in Illinois on or after August 28, 1986, of an offense listed below, or placed on supervision for such an offense on or after September 18, 1986, and no other fine is imposed, the following penalty shall be collected by the Circuit Court Clerk:
>
> (1) $25, for any crime of violence as defined in subsection (c) of Section 2 of the Crime Victims Compensation Act;
>
> (2) $20, for any other felony or misdemeanor, excluding any conservation offense." 725 ILCS 240/10(c)(1)(2) (West 2008).

Defendant contends the $25 fee under subsection (1) should not have been assessed because she did not commit a crime of violence. The State agrees, the $25 fee should be vacated, but argues the $20 fee in subsection (2) should have been imposed.

Defendant argues the $20 fee under subsection (2) is not applicable because she was assessed other fines and fees in this case. Section 10(b) of the VCVA Act provides that, if other fines and fees are imposed, the penalty is "$4 for each $40, or fraction thereof, of fine imposed." 725 ILCS

240/10(b) (West 2008). Defendant was assessed a $10 mental health court charge. Defendant contends that under section 10(b), therefore, she should be assessed a $4 fee based on the $10 mental health court fine. Although the mental health court charge is named a "fee," it has been deemed a fine because it is a punishment imposed as part of a sentence, as opposed to a charge to recoup an expenditure of the State, which constitutes a fee. *People v. Graves*, 235 Ill. 2d 244, 250 (2009); *People v. Jones*, 223 Ill. 2d 569, 581-82 (2006). Therefore, section 10(b) does apply in this case. However, defendant was assessed several other fines and fees.

Our review of the fines and fees order indicates that in addition to the $10 mental health court fee, the following additional fines and fees were imposed against defendant: a $30 children's advocacy center assessment; a $5 youth diversion/peer court fine; and a $5 drug court fine. See *Graves*, 235 Ill. 2d at 255-56 (youth diversion/peer court charge is a fine); *People v. Folks*, 406 Ill. App. 3d 300, 305 (2010) (children's advocacy center assessment and drug court assessment are fines). Therefore, adding those fines and fees to the $10 mental health court fine, defendant was assessed a total of $50 in fines and fees. Applying the formula in section 10(b), we impose a VCVA assessment of $8.

Lastly, defendant challenges four additional charges imposed as a result of her felony conviction. Her opposition to those charges is moot given our affirmance of her conviction.

In conclusion, we vacate the $5 Court System fee and the $25 VCVA assessment and impose a VCVA assessment of $8 based on the fines and fees imposed against defendant. The judgment of the trial court is affirmed in all other respects.

Affirmed in part as modified; vacated in part.