

No. 1-10-3369

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).

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. 10 CR 2407
)	
ERIC COLLIER,)	Honorable
)	Evelyn B. Clay,
Defendant-Appellant.)	Judge Presiding.

JUSTICE GARCIA delivered the judgment of the court.
Presiding Justice Lampkin and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held:* Evidence sufficient to sustain defendant's conviction for felony retail theft.

¶ 2 Following a bench trial, defendant Eric Collier was found guilty of felony retail theft and sentenced to five years in prison. On appeal, defendant contends that his conviction should be reduced to a Class 4 felony because the State failed to prove beyond a reasonable doubt that the value of the items taken exceeded \$150, and that his cause should be remanded for resentencing.

¶ 3 At trial, Lavell McAbee testified that on January 16, 2010, he was working as the lead loss prevention investigator at Loehmann's, a retail store located at 151 North State Street in Chicago. About 1:15 p.m. that afternoon, he was on duty and watching the closed circuit television located in the loss prevention office on the second floor. Through this device, he saw defendant enter the store, walk to the men's fragrance department, take four bottles of men's cologne and place them into a green tote bag. Defendant then exited the store into the vestibule, past all points of sale.

¶ 4 Because defendant did not pay for the items, McAbee and MacArthur Lindell, another loss prevention officer, detained him, and escorted him to the loss prevention office where they recovered four men's fragrance items from inside defendant's bag. They took pictures of these items, and scanned each item to create a receipt. McAbee testified that the value of the items was over \$150. At this point, defense counsel objected on the basis of hearsay and the failure of the State to tender the receipt to the defense prior to trial, but the trial court overruled these objections.

¶ 5 McAbee then testified that he personally scanned the items, and when defense counsel renewed his objection to the receipt on the basis of hearsay, he was overruled by the trial court. McAbee also testified that the receipt is dated January 16, 2010, and indicates that it is from Loehmann's. He kept one copy of the receipt for the store and gave another copy of it to the police.

¶ 6 The parties stipulated that at the preliminary hearing, McAbee testified that "my officer" scanned the items. However, at trial, McAbee testified that both he and Lindell were present in the loss prevention office when the items were scanned and both remained there until the police arrived.

¶ 7 Chicago Police Officer Carlos Mota testified that about 1:15 p.m. on January 16, 2010, he went to Loehmann's at 151 North State Street in response to a dispatch call, and spoke with McAbee regarding the incident. Based on the information McAbee gave him and the evidence he viewed, including a register receipt and a photograph, he took defendant into custody for retail theft. Defense counsel again raised a hearsay objection to the testimony regarding the receipt, which the trial court overruled.

¶ 8 Officer Mota further testified that he took possession of the photograph and the receipt, and that his partner, Officer Murray, inventoried them at the First District station. Officer Mota identified the State's exhibits as items he received at Loehmann's on the day of the theft: the register receipt for the fragrances, and the photograph of the four fragrance boxes that are the subject of the receipt.

¶ 9 The State rested its case and moved to enter the People's Exhibits into evidence. Defense counsel again objected on the basis of hearsay and the trial court received the exhibits over the defense objection.

¶ 10 The trial court then found defendant guilty of retail theft. In announcing its decision, the trial court determined that the State had met its burden, that there was no reasonable doubt, and that the items "scanned out to be a value over \$150."

¶ 11 Defendant filed a motion for a new trial claiming that McAbee's testimony regarding the value of the items was not reliable because he gave conflicting testimony regarding who scanned the items, and that the State did not provide reliable evidence that the items exceeded a value of \$150 because the receipt, which was entered into evidence over defense counsel's objection, is hearsay. The trial court denied defendant's motion, and, after hearing evidence in aggravation and mitigation, sentenced him to 5 years in prison. Defendant then filed a motion to reconsider sentence, which was also denied.

¶ 12 On appeal, defendant contends that his conviction for felony retail theft must be reduced to a Class 4 felony because the State failed to prove beyond a reasonable doubt that the value of the items taken exceeded \$150. Defendant specifically contends that since McAbee had no independent knowledge of the value of the items, his testimony was hearsay; and that no foundation was established for the admission of the receipt pursuant to the business records exception to the rule against hearsay.

¶ 13 The standard of review on a challenge to the sufficiency of the evidence 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. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). This standard applies to all criminal cases, whether the evidence is direct or circumstantial, and acknowledges the responsibility of the trier of fact to determine the credibility of witnesses, to weigh the evidence, and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence. *People v. Campbell*, 146 Ill. 2d 363, 374-75 (1992). A reviewing court will not reverse a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 14 In this case, defendant was found guilty of felony retail theft. 720 ILCS 5/16A-3 (West 2010). To sustain that conviction, the State's evidence must establish that defendant took merchandise with a retail value exceeding \$150. 720 ILCS 5/16A-10 (West 2010). Value, in this case, is an element of the offense that must be resolved by the trier of fact as exceeding or not exceeding \$150. *People v. DePaolo*, 317 Ill. App. 3d 301, 308 (2000). In the absence of contrary evidence, testimony as to the value of the items is proper proof of value. *DePaolo*, 317 Ill. App. 3d at 308.

¶ 15 Here, McAbee, the lead loss prevention officer at Loehmann's testified that the items taken by defendant had a retail value over \$150. That amount was based on the receipt produced by McAbee and Lindell after recovering the items taken out of defendant's bag. That receipt, showing a pre-tax subtotal of \$169.96, if properly before the court and uncontradicted, would be sufficient to prove the element of value for the felony offense. *DePaolo*, 317 Ill. App. 3d at 308.

¶ 16 Defendant contends, however, that the State failed to meet its burden because McAbee was not competent to testify as to the value of the items. In support of his contention, he cites *People v. Mikolajewski*, 272 Ill. App. 3d 301 (1995). *Mikolajewski*, however, is factually distinguishable from the case at bar.

¶ 17 In *Mikolajewski*, a jury found defendant guilty of retail theft. 272 Ill. App. 3d at 312. To prove the value of the items in that case, the State relied on the testimony of a store security officer, who testified that she had seen the price tags on the items and that the price tags are placed on merchandise in a distribution center in another state, a process in which she took no part. *Mikolajewski*, 272 Ill. App. 3d at 313. On appeal, the reviewing court found that the trial court had erred in refusing to instruct the jury on a lesser included offense, noting that the State had relied on hearsay evidence to prove value in that the security officer had no understanding of the actual value of the items and that the price tags, which were self-authenticating and admissible as an exception to the hearsay rule, were not produced in court. *Mikolajewski*, 272 Ill. App. 3d at 317-18.

¶ 18 By contrast, there is no jury instruction issue in this case, and defendant argues reasonable doubt, which was not discussed in *Mikolajewski*. We further observe that questions regarding the knowledge of a witness in valuing property go toward the weight, not the competency, of the evidence. *DePaolo*, 317 Ill. App. 3d at 309. Here, unlike the security officer

in *Mikolajewski*, McAbee did not base his testimony on price tags that were affixed to merchandise off-site through a process in which he took no part. Rather, he testified to the value of the items based on the receipt he generated by scanning the items immediately after recovering them from defendant and in the presence of another loss prevention officer. Thus, contrary to defendant's contention, McAbee's testimony was based on independent knowledge, and was not hearsay. *People v. Drake*, 131 Ill. App. 3d 466, 470-71 (1985).

¶ 19 In addition, McAbee was present at trial and was not only available, but subject to examination regarding the actual price of the stolen merchandise immediately after it was taken from the display in the store. *Drake*, 131 Ill. App. 3d at 470. Although defendant cites the conflicting testimony McAbee provided as to who actually generated the receipt, the resolution of this matter was to be made by the trial court (*Campbell*, 146 Ill. 2d at 389), and, in any event, does not raise a reasonable doubt of defendant's guilt where the evidence of value was conclusive (*People v. Greene*, 50 Ill. App. 3d 872, 874 (1977)).

¶ 20 Defendant further contends that the State failed to properly introduce the receipt that McAbee generated and that the content of the receipt was inadmissible hearsay. Defendant claims that because the State made no attempt to introduce the receipt as a business record it was hearsay and there was no other proof of the value of the items. The State responds that defendant's claim is essentially a challenge to the admissibility of the evidence, citing *DePaolo*, 317 Ill. App. 3d at 308.

¶ 21 Under well-settled law, defendant cannot raise on appeal the admissibility of evidence where he did not both contemporaneously object at trial and present the issue in a post-trial motion. *People v. Robinson*, 157 Ill. 2d 68, 83 (1993), citing *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). In addition, a specific objection to the admission of evidence waives all grounds not specified in the objection. *People v. Lewis*, 165 Ill. 2d 305, 335 (1995). This rule is

particularly appropriate where a lack of a specific and timely objection removed the opportunity to correct any foundational deficiencies. *People v. Mulvey*, 366 Ill. App. 3d 701, 713 (2006).

¶ 22 Here, defendant objected solely on the basis of hearsay. An admissibility objection for lack of proper foundation is not synonymous with an admissibility objection based on hearsay. *Lewis*, 165 Ill. 2d at 335. Because defendant failed to raise lack of foundation at trial and in a post-trial motion, he has waived that issue for purposes of appeal. *Lewis*, 165 Ill. 2d at 336; *Robinson*, 157 Ill. 2d at 83.

¶ 23 In his reply brief, defendant states that he "has not argued that the trial court erred in admitting the evidence, or that plain error analysis applies," and we, accordingly, decline to undertake a plain error analysis here. Based on McAbee's testimony that the value of the items exceeded \$150, as well as the receipt reflecting that the value of the items was \$169.96, the State provided sufficient evidence to prove beyond a reasonable doubt that the value of the items exceeded \$150, establishing defendant's commission of the felony offense.

¶ 24 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 25 Affirmed.