

2012 IL App (2d) 110531-U  
No. 2-11-0531  
Order filed September 18, 2012

**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  
SECOND DISTRICT

---

THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Du Page County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 10-CM-1774
	)	
VALERIE BECK,	)	Honorable
	)	William I. Ferguson,
Defendant-Appellant.	)	Judge, Presiding.

---

JUSTICE ZENOFF delivered the judgment of the court.  
Justices Burke and Hudson concurred in the judgment.

**ORDER**

*Held:* (1) The State proved defendant guilty beyond a reasonable doubt of criminal damage to property: a witness testified that he noticed the damage to a jail cell only after defendant had been alone inside, and the damage was such that the trial court could infer that, if someone else inflicted it previously, the witness would have noticed it when placing defendant in the cell; (2) defendant did not show second-prong plain error in the trial court's award of \$100 in restitution despite the absence of any evidence establishing that amount as the cost to repair defendant's criminal damage to property: the damage was serious enough that any inaccuracy was *de minimis*.

¶ 1 Defendant, Valerie Beck, appeals from her conviction of criminal damage to property (720 ILCS 5/21-1(1)(a) (West 2010)) and the award of \$100 in restitution. She asserts that the evidence

was insufficient to support the conviction. She further asserts that the State failed to present any evidence that the damage would cost \$100 to repair, and that this was plain error. We hold that the evidence was sufficient to support her conviction and that any inaccuracy in the restitution amount was *de minimis*, and therefore not plain error. We accept the State's confession of error as to defendant's entitlement to a \$10 credit against her specialty court fine and a \$10 correction of her State's Attorney fee. We therefore affirm the sentence (as modified) and the conviction.

¶ 2

### I. BACKGROUND

¶ 3 The State charged defendant with criminal damage to property. The charge resulted from the discovery, as a detention officer removed defendant from cell 110 of the jail at the Naperville police department, of what appeared to be numerals scratched into the paint of the cell's windowsill. Defendant had a bench trial on the charge.

¶ 4 At trial, Corey Jordan, a detention officer with the Naperville police, identified defendant as the person he had placed in cell 110 on the night of April 14 through 15, 2010. Jordan testified that the jail at the Naperville police department had 28 cells. Typically, the holding cells would have 10 to 15 detainees in a night. At the beginning of each shift, the practice was for officers to check each cell for contraband and damage. After any inmate left, Jordan further testified, they would again search the cell. The jail's policy was to check the cells every half hour. The cells were automatically unlocked unless an inmate was in one, but the area was openly accessible only to detention and police officers.

¶ 5 On the night of April 14 through 15, 2010, Jordan had a 12-hour shift. During the start-of-shift search, he searched all the cells, including cell 110, and did not see anything of note in that cell:

“Q. At the beginning of your shift did you follow the protocol as far as doing a search of the cells you were going to use that night for damage and for contraband?

A. Yes, sir.

Q. Did you find any new damage at that particular time?

A. No, sir.

Q. Did you find—Particularly in Cell No. 110, did you find any damage in that cell?

A. No, sir.”

¶ 6 Jordan had responsibility for booking all detainees who arrived that night. Defendant was one such person. He saw someone search defendant and take items from her when she arrived at the station. Jordan later escorted her to cell 110.

¶ 7 As Jordan arrived at the cell, he did not note any damage:

“Q. And when you put her into Cell 110, did you notice at that point any sort of fresh damage to that particular cell?

A. No, sir.”

After he placed her in the cell, no one else went in. Under jail policy, an inmate would immediately receive a telephone to make any necessary calls. Defendant received a telephone, and Jordan saw her using it.

¶ 8 Jordan went to the cell to escort defendant out of it. When he arrived, she was sitting on the bench in the cell. As he was leaving with her, he saw marks scratched in the paint on the metal ledge of the window facing the hallway. He identified photographs of the damage as representative of what he saw in the cell. The photographs show what appear to be seven numerals. The numerals are very irregularly shaped.

¶ 9 On cross-examination, Jordan stated that he did not file a report on the incident. He said that he did not recall many specific details of the relevant shift. In particular, he could not remember whether he had another officer working with him that evening and could not be certain whether defendant had been the first detainee in cell 110 that shift. Further, he did not know how long defendant had been in the cell before he removed her.

¶ 10 Officer Kevin Fasana of the Naperville police testified to coming to the jail at 1:20 or 1:30 a.m. the morning of the incident and to taking photographs of the damage to the cell; he testified that his photographs were fair representations of the scene. The photographs show a conspicuous group of what appear to be numerals gouged into the paint on the windowsill below a cell window that faced out into the jail hallway. The photographs show that the numerals are clearly visible through the window from outside the cell. The court admitted the photographs. After Fasana testified, the State rested.

¶ 11 Defendant moved for a directed finding, arguing that, because Jordan could remember no details, he was not credible and the State had failed to meet its burden of proof. The State argued that, based on the photos, the scratching was something that any officer would notice immediately on entering the cell. It tendered the photos to the court to make the point. It argued that, therefore, defendant was the only person with the opportunity to do the damage. The court denied the motion, and defendant rested.

¶ 12 In closing, the State summarized Jordan's testimony concerning his examination of the cell. It argued again that, based on the photographs, the damage to the cell was so obvious from the outside hallway that Jordan could not have missed it had it already been there.

¶ 13 Defendant noted that Jordan did not remember enough to rule out another officer's having used cell 110 for a different prisoner, which precluded taking his testimony as proof beyond a reasonable doubt.

¶ 14 The court "[fou]nd[] that the evidence presented by the State and the testimony of [Jordan] is credible and believable and finds that it is sufficient to meet the State's burden of proof."

¶ 15 Defendant moved for a new trial, again asserting that the gaps in Jordan's memories made the evidence insufficient. The court denied the motion, stating that Jordan was credible in testifying that defendant had the exclusive opportunity to make the marks.

¶ 16 At the sentencing hearing, defense counsel told the court that defendant, who was in her fifties, was undergoing radiation therapy for cancer and had partially disabling arthritis. The court, on the State's recommendation, imposed a sentence of \$100 in restitution and a \$25 State's Attorney fee. No evidence was presented to establish to the proper restitution amount. Defendant did not object to any part of this sentence. The sentencing order showed a State's Attorney fee of \$35 and a \$10 specialty court fine under section 5-1101(d-5) of the Counties Code (55 ILCS 5/5-1101(d-5) (West 2010)).

¶ 17 On May 31, 2011, defendant filed a motion to reconsider her sentence, asserting that the \$100 in restitution was excessive "in light of the evidence presented to the court." She simultaneously filed a notice of appeal. On June 14, 2010, she withdrew the motion to reconsider the sentence. Defense counsel said that this was because of defendant's health problems. On June 23, 2011, she filed a motion for leave to file a late notice of appeal, which this court granted.

## II. ANALYSIS

¶ 18 On appeal, defendant asserts first that the evidence was insufficient to support her conviction. She asserts that “all [Jordan] really ‘knew’ was that [she] was in the cell that was damaged.” She points out that Jordan was unable to testify how long defendant was in the cell. Moreover, he could not say if anyone was in the cell immediately before defendant. She argues that the photographs suggest that the scratch marks were not new and that they were neither easily nor quickly made.

¶ 19 Defendant argues in the alternative that no evidence supported the \$100 restitution award and argues that we should review the issue as a matter of plain error. Further, she argues that the State’s Attorney fee should be corrected to match the \$25 that the court imposed and that she should have credit under section 110-14(a) of Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2010)) against the \$10 specialty court fine for the time that she was in custody, which spanned two calendar days.

¶ 20 The State responds that the circumstantial case was strong enough to sustain defendant’s conviction. It further argues that defendant forfeited any objection to the restitution amount by failing to raise it in the trial court. Finally, it agrees with defendant as to the fine and fee.

¶ 21 We agree with the State on all issues. The court, based on Jordan’s testimony and the evidence photographs, could properly draw the inference that, had the damage been present when Jordan took defendant to cell 110, Jordan would not have failed to notice the damage. It therefore could conclude that only defendant could have caused the damage. Further, it could reasonably conclude from the evidence photographs that \$100 was a reasonable estimate of the cost of repairing the damage.

¶ 22 On the issue of the sufficiency of the evidence, the standard of review is the familiar one from *People v. Collins*, 106 Ill. 2d 237, 261 (1985):

“When presented with a challenge to the sufficiency of the evidence, it is not the function of [the reviewing] court to retry the defendant. \*\*\* [Citation.] [Rather,] ‘the relevant question 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.’ ” (Emphasis in original.) *Collins*, 106 Ill. 2d at 261 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

It is the role of the trier of fact, and not our role, to judge the credibility of the witnesses, to decide the proper weight of all testimony, and to draw reasonable inferences from the evidence, and this court will not substitute its judgment for that of the trier of fact on these matters. *Village of Bull Valley v. Winterpacht*, 2012 IL App (2d) 101192, ¶ 12.

¶ 23 The evidence here was sufficient; we will not reverse the court’s finding that defendant was guilty. The matter turns on how strong an inference can be drawn from Jordan’s testimony that he did not see any damage when he placed defendant in cell 110. We conclude that the court was entitled to draw a strong inference that the damage was not yet there. Fasana testified that the photographs, which showed that the damage was conspicuous from outside the cell, accurately showed the actual damage. Therefore, Jordan’s testimony that he did not see the damage when he placed defendant in the cell allows a very strong inference that it had not yet occurred. Further, Jordan’s other testimony established that no one other than defendant was in the cell between the time Jordan put defendant in the cell and the time he noticed the damage. Therefore, the court could properly infer that defendant was the only person with the opportunity to do the damage.

¶ 24 Contrary to what defendant argues, Jordan’s limited memory of other details of his shift does not affect this conclusion. Jordan was frank about his lack of memory of other details; the court

found him credible nonetheless. The memory limitations cited by defendant are no basis for rejecting the court's credibility determination. See *People v. Bowen*, 241 Ill. App. 3d 608, 620 (1993) ("minor inconsistencies in the testimony do not, of themselves, create a reasonable doubt"). Further, we have already taken into account that, because Jordan was uncertain whether cell 110 had had occupants before defendant during that shift, the court had to rely on Jordan's observations as he placed defendant in the cell.

¶ 25 Defendant argues that the photographs of the damage appear to show markings with too many signs of age to have been made just before Fasana took the photographs. We disagree that the photographs counter the State's theory. Defendant apparently interprets the dark surface where the windowsill paint is absent as a sign of aging. We have examined the photographs and deem that no conclusion about the damage's age is manifest to the nonexpert eye.

¶ 26 Turning to the matter of the restitution award, we conclude that, contrary to defendant's claim, no plain error occurred in the court's award of \$100 in restitution. Defendant did not pursue a challenge to the award in a postsentencing motion and she therefore forfeited the issue on appeal. See *People v. Day*, 2011 IL App (2d) 091358, ¶ 48 (a claim that a restitution award was improper was forfeited when the defendant did not raise it in a postsentencing motion). Defendant cites *People v. Jones*, 206 Ill. App. 3d 477, 482 (1990), for the proposition that the imposition of a restitution award the amount of which is unsupported by the evidence can be plain error as an error affecting substantial rights. (In *Jones*, the award was \$1,939.98 when the evidence suggested an out-of-pocket loss of \$50. *Jones*, 206 Ill. App. 3d at 482.) Defendant is correct about the principle, but that principle does not apply here, given the *de minimis* nature of any inaccuracy in the restitution award.

¶ 27 Self-evidently, a *de minimis* error cannot affect a substantial right. Thus, in *United States v. Pennington*, 216 F. App'x 479, 485 (6th Cir. 2007), it was held that an error of \$16 in calculating restitution was *de minimis* and thus, as it could not affect the defendant's substantial rights, could not be plain error. Here, the evidence photographs showed serious gouging of the windowsill paint's surface, so that some uncertain amount of work would be necessary to produce an unmarred finish. We can thus be certain that the damage would cost something to fix, so any overstatement in the award would necessarily be less than \$100. We deem whatever inaccuracy existed to be *de minimis*. Defendant's choice to withdraw her postsentencing motion suggests that, at least given her health at the time, pursuit of a correction was more trouble than any reduction of the award would be of worth to her. When the costs to the defendant of attending a new sentencing hearing would of the same magnitude as any gain to her from the presentation of evidence, we can fairly call the error *de minimis*.

¶ 28 As a final matter, we accept the State's confession of error concerning the State's Attorney fee and the credit against the specialty court fine. We therefore modify the State's Attorney fee to the \$25 imposed by the court and we grant \$10 credit under section 110-14(a) in satisfaction of the speciality court fine.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm defendant's conviction, and we affirm her sentence as modified.

¶ 31 Affirmed as modified.