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2012 IL App (3d) 100842-U

Order filed June 6, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the Circuit Court
) of the 21st Judicial Circuit,
Plaintiff-Appellee,) Kankakee County, Illinois,
)
v.) Appeal No. 3-10-0842
) Circuit No. 09-CF-569
FUNZELL J. HOLLINS,)
) Honorable
Defendant-Appellant.) Clark E. Erickson,
) Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court did not improperly rely on inadmissible hearsay, and (2) the evidence at trial was sufficient to establish all of the elements of the defendant's crime.

¶ 2 The defendant, Fonzell J. Hollins, was found guilty of two counts of retail theft (720 ILCS 5/16A-3(a) (West 2008)) and was sentenced to 6½ years' imprisonment. The defendant appeals his conviction, arguing that: (1) he did not receive a fair trial where the trial court relied exclusively on inadmissible hearsay in determining an essential element of the offense; and (2)

the evidence was insufficient to establish the value of the merchandise taken from the store. We affirm.

¶ 3

FACTS

¶ 4 The defendant was charged with two counts of retail theft (720 ILCS 5/16A-3(a) (West 2008)). The information alleged that the defendant took video games with a value in excess of \$150 from a Target retail store. The cause proceeded to a jury trial.

¶ 5 At trial, the State offered the testimony of Matthew Fisher, an investigative specialist for Target. He stated that he had been employed in asset protection for six years and was assigned to the Target store in Bradley, Illinois, because it was experiencing heavy losses in video games. Fisher testified that he spotted the defendant and an accomplice attempting to steal a number of video games from the store. He followed the pair outside and watched as a police officer questioned the suspects. Fisher then assessed the stolen video games taken from the defendant and the accomplice. He testified to the price of each game and stated that the six games had a combined total of \$179.94. The defense did not object to Fisher's testimony regarding the value of the merchandise, and no other evidence was presented to establish their value.

¶ 6 The jury found the defendant guilty of both counts of retail theft. Thereafter, the defendant was sentenced to 6½ years' imprisonment. The defendant appeals.

¶ 7

ANALYSIS

¶ 8 The defendant argues that he did not receive a fair trial where the trial court relied exclusively on inadmissible hearsay in determining an essential element of the offense. Initially, we note that the defendant failed to object to the testimony at trial, and therefore the issue was forfeited and cannot be considered on appeal unless it was plain error. Ill. S. Ct. R. 615(a) (eff.

Aug. 27, 1999). The plain error doctrine bypasses forfeiture principles and allows a reviewing court to consider unpreserved error when: (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. *People v. Herron*, 215 Ill. 2d 167 (2005). However, before we can determine whether an error fits under either of the above categories, we must first determine whether an error actually occurred. *People v. Cosby*, 231 Ill. 2d 262 (2008).

¶ 9 The defendant claims that Fisher's statements regarding the value of the merchandise were inadmissible hearsay and the jury should not have been allowed to rely on the statements. We disagree. In *People v. DePaolo*, 317 Ill. App. 3d 301 (2000), the court held that testimony regarding the value of merchandise provided by a witness who had knowledge of the value is not inadmissible hearsay, and that questions regarding the knowledge of a witness in valuing the property go toward the weight of the evidence, not its competency. *Id.*

¶ 10 Although Fisher was not a store manager as in *DePaolo*, we find that his position with Target would have provided him with sufficient knowledge of the value of the merchandise. Fisher was employed by Target in asset protection and specifically sent to the store in Bradley to oversee a problem with video game thefts. It is reasonable to conclude that he would have had knowledge of the value of the assets he was protecting. Thus, we find that his statements were not inadmissible hearsay and that the trial court did not err in allowing the jury to consider his comments.

¶ 11 Next, the defendant argues that the evidence was insufficient to prove that the merchandise was valued at over \$150. When presented with a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant; 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.

People v. Collins, 106 Ill. 2d 237 (1985). A conviction will only be overturned where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *People v. Smith*, 185 Ill. 2d 532 (1999).

¶ 12 Here, evidence was presented by Fisher that established that the merchandise was valued at over \$150. The defendant claims that the evidence was not sufficient because it came in the form of inadmissible hearsay. As stated above, we do not believe that the evidence was inadmissible hearsay, and regardless, it was not objected to. Thus, we find that the evidence was sufficient to prove the value element of the offense.

¶ 13

CONCLUSION

¶ 14 The judgment of the circuit court of Kankakee County is affirmed.

¶ 15 Affirmed.