2017 IL App (1st) 151277-U

No. 1-15-1277

Order filed July 19, 2017

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 14799
	)	
ALEX BAILEY,	)	Honorable
	)	Thomas J. Byrne,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's challenge to the introduction of a grocery store receipt to prove the value of merchandise is not reviewable as second-prong plain error.

¶ 2 Following a jury trial, defendant Alex Bailey was convicted of the felony retail theft of property exceeding $300 in value and was sentenced to five years in prison. On appeal, defendant contends his conviction should be reversed and this case remanded for a new trial because the State was erroneously allowed to introduce into evidence a register receipt indicating

the total value of the items stolen without presenting an adequate foundation for the receipt's admission.

¶ 3 Defendant was charged with retail theft under section 16-25(a)(1) of the Criminal Code of 2012 (720 ILCS 5/16-25(a)(1) (West 2012)) for knowingly taking more than a dozen bottles of alcohol from the liquor department of a Jewel-Osco grocery store without paying for them. To convict defendant of the Class 3 felony version of retail theft, the State was required to prove that the full retail value of the items exceeded $300. 720 ILCS 5/16-25(f)(3) (West 2012).

¶ 4 At trial, Armin Balli testified that he was a loss prevention officer for the Jewel-Osco store at 1340 South Canal Street in Chicago and had worked for the company in that capacity for 26 years. At about 7:40 p.m. on July 19, 2014, Balli was watching the closed circuit television in the store's security office. Balli saw footage of defendant in the liquor department removing bottles of Grey Goose and Ciroc vodka from a top shelf and placing them in a shopping cart.

¶ 5 Defendant wheeled the cart out of the liquor department and past the final point of purchase to an entrance door, which Balli explained was a revolving door that could not be used to exit the store. Balli left the security office and followed defendant to the entrance door. Defendant unsuccessfully attempted to push the cart through the revolving door and then tried to exit through a handicapped door.

¶ 6 Balli identified himself to defendant and asked defendant to accompany him to the security office. Defendant "broke free" from Balli's grip and ran to the rear of the store and out of another door. Police arrested defendant in the parking lot.

¶ 7 Balli testified the shopping cart with the bottles of alcohol was recovered and he "directed an employee to take them to the service desk to get them rung up." Balli said that step

was taken to "generate an evidence receipt for my internal security report and to make a copy for the police department's paperwork." The State entered into evidence a photograph taken by Balli depicting the bottles of alcohol.

¶ 8 Balli's testimony continued as follows:

"Q. Next I want to show you what has previously been marked as People's Exhibit No. 2 for identification. Do you recognize that?

A. Yes. It's the Jewel-Osco receipt generated at the service desk.

Q. And is that the receipt that was generated after you brought the bottles of alcohol over to the service desk?

A. Yes. The bottles that I directed the employee to bring to the service desk, yes.

Q. And does that receipt reflect the pretax value of those 13 bottles of vodka?

A. Yes.

Q. And what is the pretax value of the 13 bottles of vodka that the defendant attempted to take?

MS. SILVA [assistant public defender]: Objection as to foundation.

THE COURT: Sustained as to foundation.

MR. DICKEY [assistant State's Attorney]: Sir, you said that you took the bottles over the service desk, is that correct?

A. Yes.

Q. Where in the store is the service desk again?

A. By the west entrance door.

Q. Had you ever, in your experience with loss prevention, had the store ring up a receipt with regards to items that were involved in a retail theft?

MS. SILVA: Objection as to what was previously done.

THE COURT: Overruled. You can answer the question.

A. On every occasion.

Q. Approximately how many times had you done this?

A. Hundreds.

Q. And when you bring the items -- like on July 19th, as you say you brought these items over to the service desk -- what do they do? What is the process that is involved when you bring the items over to the service desk?

A. The clerk at the service desk would ring up the merchandise under training mode, so it's not generated as sales for the store.

Q. Was that done in this case?

A. Yes. It says here 'void, training mode.'

Q. And is People's Exhibit No. 2 in the same or substantially the same condition as it was when it was generated on July 19th of 2014?

A. Yes, it is.

Q. And does People's Exhibit No. 2 reflect a value pretax for the bottles of vodka that were taken?

MS. SILVA: Objection as to foundation.

THE COURT: Overruled at this time.

A. Yes, it does.

Q. What is the pretax value of the bottles of vodka?

A. As I stated [*sic*], it is $366.97."

¶ 9 The State introduced into evidence and played for the jury the security video obtained from the store. Chicago police officer Armando Alvarez testified as to the details of defendant's arrest. The trial court denied the defense's motion for a directed finding, and the defense presented no evidence. The jury found defendant guilty of felony retail theft. Defendant filed a posttrial motion, which was denied. Defendant was eligible for an extended-term sentence due to his prior felony convictions; however, the trial court imposed a term of five years in prison, which was within the sentencing range for a Class 3 felony.

¶ 10 On appeal, defendant contends the State did not establish an essential element of the offense, namely that the value of the bottles of alcohol recovered from the shopping cart was more than $300. He argues the State did not present the required foundation to enter the store receipt into evidence under the business records exception to the rule against hearsay. Accordingly, he asserts that his conviction should be reduced from a Class 3 felony to a Class A misdemeanor, the level of offense for the theft of items not exceeding $300 in value.

¶ 11 To preserve this argument for appeal, defendant must have both "specifically object[ed] at trial" to the evidence at issue and raised the issue in a posttrial motion. See *People v. Woods*, 214 Ill. 2d 455, 470 (2005). If either requirement is not met, the defendant's challenge is waived for purposes of appellate review. *Id*. Defendant acknowledges he did not raise an argument as to the admissibility of the receipt in his posttrial motion; thus, defendant has forfeited this issue for our review.

¶ 12 Defendant now seeks review of his unpreserved claim under the second prong of the plain-error doctrine. That rule allows forfeited claims to be addressed in two circumstances: (1) where a clear or obvious error has occurred and the evidence is so closely balanced that the error alone could have affected the outcome of the case, or (2) where a clear or obvious error occurred that is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Hood*, 2016 IL 118581, ¶ 18.

¶ 13 We do not find the admission of the store receipt in this case to be in the category of second-prong plain error. That category of error, which warrants the automatic reversal of a defendant's conviction, has been found to involve structural error that renders a criminal trial unfair or represents an unreliable means to determine guilt or innocence. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010).

¶ 14 The admission of the store receipt in this case did not constitute structural error. See *People v. Glasper*, 234 Ill. 2d 173, 198 (2009) (quoting *Johnson v. United States*, 520 U.S. 461, 468-69 (1997) (structural error is recognized in a "very limited class of cases")). Such error has been identified in a small class of cases such as the denial of counsel, trial by a biased judge or a defective reasonable doubt instruction, among others, which our supreme court has described as "systemic error which serves to erode the integrity of the judicial process and undermine the fairness of the defendant's trial." *Id*. at 609, 613-14 (quoting *People v. Herron*, 215 Ill. 2d 167, 186 (2005)). Here, the store's loss prevention officer testified as to the creation of the receipt, and the trial court ruled that the document could be placed into evidence. The court's ruling on an evidentiary issue, even if disputed by defendant, does not warrant inclusion in the category of

structural error because it did not erode the integrity of the trial or create such a fundamental flaw in his trial so as to render the proceeding unfair.

¶ 15 Accordingly, defendant's Class 3 felony retail theft conviction is affirmed.

¶ 16 Affirmed.