MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI,

Respondent,

v.

THOMAS J. SAVAGE, III,

Appellant.

DOCKET NUMBER WD82413

Date: September 29, 2020

Appeal from:
Clay County Circuit Court
The Honorable Janet L. Sutton, Judge

Appellate Judges:
Division Four: Cynthia L. Martin, C.J., P.J., and Alok Ahuja and Edward R. Ardini, JJ.

Attorneys:
Annette M. Wallace, Kansas City for appellant
Evan J. Buchheim, Jefferson City for respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, Respondent,
v.
THOMAS J. SAVAGE, III, Appellant.

WD82413 Clay County

Before Division Four Judges: Cynthia L. Martin, C.J., and Alok Ahuja and Edward R. Ardini, JJ.

Appellant Thomas Savage was convicted of second-degree burglary and misdemeanor stealing. Savage's prosecution involved the burglary in April 2017 of the home of a senior officer in the Kansas City Police Department.

After the jury returned its verdict finding Savage guilty of second-degree burglary and misdemeanor stealing, the circuit court sentenced him to six years' imprisonment in the Department of Corrections for burglary, and 180 days' imprisonment in the county jail for stealing, with the sentences to be served concurrently. The court also Savage to pay $4,711.54 in restitution, ordered court costs taxed against Savage, and entered a $46 judgment in favor of the Crime Victims' Compensation Fund.

Savage appeals.

AFFIRMED.

Division Four holds:

The State has filed a motion to dismiss Savage's appeal based on the "escape rule." The State's motion relies on the fact that Savage has failed to maintain contact with his parole officer since June 2020. We decline to dismiss the appeal. Savage maintained proper contact for several months, and his current failure to communicate may be explained by non-payment of a cellular phone bill. Further, his parole officer has recommended "delayed action" for 90 days, as the officer makes efforts to reengage Savage.

Savage has filed a motion to remand the case to the circuit court for a new trial, or to permit the circuit court to consider a motion for new trial, based on newly

discovered evidence. We deny Savage's motion to remand. Savage's motion relies on material which he alleges he could have used to impeach a fingerprint examiner who provided the only evidence directly tying Savage to the crime scene. This case does not involve the extraordinary circumstances justifying a remand to avoid manifest injustice or miscarriage of justice. The newly discovered evidence cited by Savage has only limited impeachment value. That evidence does not indicate that the examiner committed any misconduct in his case or that any of her testimony in this case was untrue.

The circuit court did not err in denying Savage's motion to strike for cause a venire member who indicated during voir dire that they hoped and expected that Savage would testify in his own defense. Despite expressing a preference that Savage would testify, the venire member also stated that they would not hold it against Savage if he did not testify.

The circuit court did not err by allowing the victim to testify during the State's case-in-chief about the emotional impact of the burglary. Savage failed to preserve his objection to this testimony because counsel only objected after the question had been asked and answered, and did not ask the circuit court to strike the testimony. Admission of this testimony did not constitute plain error because the challenged testimony was very brief and was plainly intended to respond to Savage's suggestion that the police handled the case differently because of the victim's status as a senior officer in the Kansas City Police Department.

The circuit court did not err by ordering restitution in the amount of $4,711.54. The circuit court ordered restitution as part of Savage's sentence for burglary, and therefore the fact that he was convicted only of *misdemeanor* stealing is irrelevant. Savage's failed to preserve any objection to the sufficiency of the evidence concerning the *amount* of restitution which the court ordered. Testimony at the sentencing hearing established that victim and his wife suffered the loss of various items of property including a television, jewelry, and a stereo. Victim's wife testified that the stolen items were worth "probably several thousand dollars" and victim testified specifically that the amount of his losses not covered by insurance was $4,711.54.

The circuit court did not err in taxing costs against Savage. Savage argues first that court costs were not taxable against him pursuant to § 550.020, RSMo, because he was unable to pay and was indigent. At sentencing, however, Savage did not present any evidence to establish that he was unable to pay court costs. Instead, he relied only on the fact that he was represented by the Public Defender and did not have a high school diploma. But Savage's ability to hire private counsel is different from his ability to pay the far smaller sum of court costs.

Finally, Savage also challenges specific items of costs that were taxed against him. Challenges to the taxation of specific items of cost are properly raised in a post-judgment motion to retax costs, and are not proper challenges to the judgment in a direct appeal – the judgment did not tax the specific items of cost Savage now challenges.

Opinion by: Alok Ahuja, Judge September 29, 2020

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