



placed them in the cart over and around the duffel bag. Engleke continued to observe the men, who proceeded to the pharmacy department and "selected multiple boxes of Prilosec." Upon reaching the aisle housing bubble bath and shampoo, the defendant "proceeded to conceal the Prilosec in the duffel bag." The defendant then "circled around the end of one of the aisles," reached the razor area, and "stood at the razors for a second, looked at them, [then] started selecting them two to three at a time and stuffing them in the duffel bag." Engleke testified that from the angle at which he was observing the men, he could clearly see the defendant lifting up the pillow that covered the duffel bag and placing the items inside the duffel bag. He continued to observe the men as they moved around the store, and ultimately observed them in the seasonal aisle, from a distance of approximately five to six feet, as the defendant said to McNulty, " 'Grab the bag. Let's leave.' " Engleke testified that the two "were walking pretty much shoulder to shoulder," with McNulty carrying the bag, as they passed the last points of sale and exited the store. At that time, Engleke and his partner, Courtney Blind, along with two assistant managers, confronted the men. McNulty attempted to flee but was apprehended by Engleke; the defendant did not attempt to flee.

¶ 5 Engleke testified that many of the events he had just described were captured on the store's video surveillance system. He verified that the system was working properly on the day in question and testified that a DVD produced from the system accurately reflected the events as he remembered them. The DVD was admitted into evidence and eventually shown to the jury. Engleke also testified that inside the duffel bag, he and the other Walmart officials discovered Prilosec and razors with a total value of approximately \$641. He authenticated photos taken of the stolen items on the date in question, which were admitted into evidence. On cross-examination, Engleke conceded that when the men exited the store by going through the pedestals containing security devices that "pick up the tags," the defendant "did go through first," although the two men "weren't probably more than three

feet apart at that point." Engleke testified that he found it "far fetched" and "improbable" to speculate that the defendant might not have known, as the men passed the security devices, that McNulty did not intend to pay for the items.

¶ 6 Walmart assistant manager David Paulissen testified, with regard to his observation of the crime, that he noticed the defendant and McNulty in the razor area "with a shopping cart and a tote with some pillows on top of it," which to him did not "look right," and so he was about to call for security to begin surveillance when he saw that Engleke was already watching the men. He testified that razors were a frequently stolen item at the store, because they are small, easy to hide, and retail for up to \$30 per package. He testified that he essentially got out of the way, to allow the asset protection workers to do their jobs, but did tell the workers to call him when they were ready to apprehend the men.

¶ 7 Walmart assistant manager Dustin Williams testified that after he and Paulissen noticed the suspicious activity of the defendant and McNulty, and realized that Engleke and Blind were also observing the two, Williams and Paulissen watched from a distance until the men "reached the point of no sale," at which time Williams "went towards the front doors to insure the safety of" Engleke and Blind. Williams testified that the photographs that had been admitted into evidence accurately portrayed the items found in the duffel bag after the men were seized and that the prices listed for the items were accurate.

¶ 8 Courtney Blind testified that she too worked in asset protection at the Belleville Walmart. With regard to the crime, she testified that after Engleke notified her that he had the two men under observation, she began to observe them too. She testified that at no point did the men attempt to pay for the merchandise and that she observed as they attempted to exit the store without paying. Blind testified that the photographs that had been admitted into evidence accurately portrayed the items found in the duffel bag. On cross-examination, she testified that when the men exited the store, "they were pretty much in sync" but that the

defendant was "maybe like a step or two ahead" of McNulty. She conceded that it was "possible" that the defendant did not know that McNulty did not intend to pay for the items.

¶ 9 Stephen McNulty was the only witness to testify for the defense. He testified that he was 19 years old and that his brother, the defendant, was "about seven or eight" years older than him. McNulty testified that the plan to steal items from Walmart was entirely his, that the defendant had no knowledge of it or involvement in it, and that McNulty had pleaded guilty and had been sentenced for his involvement in the crime. He testified that he stole the Prilosec and razors because he could get money on the street for them. He testified that the defendant was under the impression that McNulty had enough money to pay for the items, although McNulty did not. According to McNulty, when the defendant discovered that McNulty did not have enough money to pay for the items, the defendant told him they should just leave. After the defendant turned to leave, McNulty grabbed the bag anyway and tried to exit the store with it, unbeknownst to the defendant.

¶ 10 On cross-examination, McNulty conceded that he had never told anyone who investigated the offense that the idea to steal the items was his or that his older brother was not involved. When asked why his brother would have gotten the duffel bag off the shelf if there was no intention of concealing items in it, McNulty testified that it was he, not the defendant, who took the bag from the shelf and placed it in the cart. He also claimed that it was he, rather than the defendant, who decided what to steal, although he conceded that it was the defendant who actually removed the razors from the shelf and stuffed them into the duffel bag.

¶ 11 Following deliberation by the jury, the defendant was convicted of retail theft over \$150 and sentenced to a term of three years' imprisonment in the Illinois Department of Corrections. The defendant's posttrial motion was denied, and this timely direct appeal followed.

¶ 12

## ANALYSIS

¶ 13 On appeal, the defendant contends he was not proven guilty beyond a reasonable doubt. In support of this proposition, the defendant points out that his brother, Stephen McNulty, testified that the defendant did not know about, or participate in, McNulty's plan to steal. We begin by noting that in Illinois, a person may be held legally accountable for another person's criminal conduct when "either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2010). The intent to promote or facilitate a crime "may be inferred from the character of [the] defendant's acts as well as the circumstances surrounding the commission of the offense." *People v. Perez*, 189 Ill. 2d 254, 266 (2000). We turn next to our standard of review. Where, as here, a defendant challenges the sufficiency of the evidence used to convict the defendant, it is not the function of this court to retry the defendant. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). Rather, we "must determine 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." *Evans*, 209 Ill. 2d at 209. After so doing, we will not reverse a conviction unless we conclude that the evidence against the defendant "is so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of [the] defendant's guilt." *Evans*, 209 Ill. 2d at 209. For evidence to be sufficient to sustain a criminal conviction, the trier of fact need not find, beyond a reasonable doubt, as to each link on the chain of circumstances surrounding an offense; to the contrary, "the trier of fact must find only that the evidence taken together supports a finding of the defendant's guilt beyond a reasonable doubt." *Evans*, 209 Ill. 2d at 209. In the case at bar, the evidence, taken together and

considered in the light most favorable to the prosecution, amply supports the jury's verdict.

¶ 14 Although it is true, as the defendant claims, that McNulty testified to the defendant's lack of involvement in the theft in question, it is also true that other evidence linked the defendant directly to the crime and showed, at the very least, that the defendant was legally accountable for the criminal conduct of McNulty. For example, the surveillance footage taken on the date in question and verified at the defendant's jury trial clearly shows the defendant removing various items from store shelves and placing them into a duffel bag surrounded and covered by pillows. As the State notes, had the defendant truly believed that McNulty intended to pay for these items, there would have been no logical reason to conceal them in a duffel bag hidden by pillows. In addition, Engleke testified that it was the defendant, not McNulty, who selected the duffel bag in the first place and put it in the cart, and corroborated the other evidence that it was the defendant, not McNulty, who removed the razors from the shelf and secreted the razors and the Prilosec into the duffel bag. Engleke also testified that while observing the men from a distance of approximately five to six feet, he heard the defendant say to McNulty, "Grab the bag. Let's leave," which the men then proceeded to attempt to do.

¶ 15 The issue of the extent of the defendant's involvement in the crime was one of resolving conflicting witness testimony. The jury was certainly entitled to believe the testimony of Engleke over that of McNulty, particularly since, as the State aptly notes, at the time McNulty gave his testimony that the defendant was not involved in the crime, McNulty had already pleaded guilty and been sentenced, and thus a reasonable jury could have concluded that McNulty's credibility was highly suspect. See, *e.g.*, *People v. Willis*, 235 Ill. App. 3d 1060, 1072 (1992) (witness who has already pleaded guilty and been sentenced for role in crime has "nothing to lose by testifying on behalf of" codefendant).

¶ 16 Our review, in the light most favorable to the prosecution, of the testimony and

videotaped evidence adduced at the defendant's jury trial leads us to conclude that a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See, e.g., *People v. Evans*, 209 Ill. 2d 194, 209 (2004). Indeed, the evidence against the defendant was quite strong, and there is simply no basis by which we could conclude that the evidence "is so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of [the] defendant's guilt." See *Evans*, 209 Ill. 2d at 209.

¶ 17

#### CONCLUSION

¶ 18 For the foregoing reasons, we affirm the defendant's conviction.

¶ 19 Affirmed.