

No. 1-10-2512

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 4070
	)	
SEDGWICK LANIER,	)	Honorable
	)	Michael Brown,
Defendant-Appellant.	)	Judge Presiding.

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

**ORDER**

¶ 1 *HELD:* Defendant's conviction for retail theft reversed where trial court applied an unconstitutional mandatory presumption; case remanded for retrial where the evidence at trial without the presumption was sufficient to prove defendant guilty beyond a reasonable doubt.

¶ 2 Following a bench trial, defendant Sedgwick Lanier was found guilty of retail theft (720 ILCS 5/16A-3 (West 2008)) and sentenced to 30 months' imprisonment. On appeal, defendant seeks an outright reversal of his conviction based on the trial court's application of an unconstitutional mandatory statutory presumption regarding the element of intent. The State concedes that defendant's conviction should be reversed, but maintains that the case should be

remanded for a new trial where the evidence was sufficient to prove his guilt even without the presumption.

¶ 3 At trial, Sharon Wheeler testified that she is the manager of the Family Dollar store on Laramie Avenue in Chicago. On February 15, 2010, she watched defendant over the tops of shelves and in mirrors as he walked back and forth between departments. In her experience at the store, that behavior indicated that the person was trying to prevent someone from following him.

¶ 4 Wheeler saw defendant place items in a basket, including lotion and air freshener, and as he walked, she saw him place the lotion in his pockets, creating a bulge in his pocket that was not there when he entered the store. He then continued to walk through the store, and as he approached the front door, Wheeler called out to her co-worker to call the police. Defendant called back, "Yeah, call the police," and then walked past the registers, where he removed a number of items and placed them in a basket that was on a counter past the last register, but before the door of the store. Defendant said "I don't have anything on me." Wheeler did not know if any items remained in defendant's pockets, and told him that he could "explain it all to the police." She then followed him as he walked on Laramie and turned on Madison.

¶ 5 Chicago police officer Edgar Brown arrived at the Family Dollar store in response to a radio call that day and spoke to Wheeler. She provided a description of the offender and he broadcast that description in a flash message.

¶ 6 Chicago police officer Shikema Teague received the flash message with the description of the offender. She saw defendant on the street and observed that he matched that description. She and her partner then approached defendant and placed him in handcuffs in the back of the squad car. When she asked defendant where he was coming from, he responded that he had just been at the Family Dollar store. The officers returned him to the store, where Wheeler identified

defendant as the offender. After being identified, defendant responded that he had just been "taunting" Wheeler. Wheeler then documented what defendant had taken, including four lotions and an air freshener, which totaled \$18.08.

¶ 7 In announcing its finding, the trial court noted that it had considered the evidence and found that the statutory presumption in section 16A-4(a) and (b) (720 ILCS 5/16A-4(a), 5/16A-4(b) (West 2008)) applied. The court observed that this statute "raises a presumption that once you move past the last known station for receiving payment you do so with the intent to permanently deprive the establishment of the possession or use or benefit of the merchandise." The court further noted that the record showed that defendant removed merchandise totaling about \$18, and that the "testimony was clear that he removed those items from a place of concealment on his body after he had passed the last known location for payment but before he went out the door." Under the circumstances, the court concluded that the State had proved defendant guilty of the offense and subsequently sentenced him to 30 months' imprisonment.

¶ 8 In this appeal, defendant contends that the trial court impermissibly applied an unconstitutional mandatory presumption in finding him guilty of retail theft which requires that his conviction be reversed. Defendant acknowledges that he has forfeited the issue for review by failing to raise it in the trial court, but claims that we may nonetheless do so based on the trial court's error and ineffective assistance of counsel.

¶ 9 In *People v. McLaurin*, 235 Ill. 2d 478, 489 (2009), the supreme court found no compelling reason to relax the forfeiture rule in cases where, as here, there was no indication in the record that the claim of error could not have been raised before the trial court. We reach the same conclusion here, but, as in *McLaurin*, we consider whether a " 'clear or obvious' " error occurred to merit plain error review. *McLaurin*, 235 Ill. 2d at 489, citing *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

¶ 10 Defendant asserts that such error occurred when the trial court expressly applied the presumption found in section 16A-4, which provides that any person who conceals unpurchased merchandise and removes it beyond the last known station for payment, shall be presumed to have carried it away with the intention of retaining it or depriving the merchant of the possession, use, or benefit of that merchandise without payment. 720 ILCS 5/16A-4 (West 2008). In *People v. Taylor*, 344 Ill. App. 3d 929, 936 (2003), this court determined that the presumption in section 16A-4 was mandatory; and, because all mandatory presumptions are unconstitutional (*People v. Pomylka*, 203 Ill. 2d 198, 204 (2003)), the mandatory presumption in 16A-4 was "unconstitutionally infirm." It therefore follows that the trial court improperly relied on this presumption in finding defendant guilty of retail theft, thereby implicating the second prong of plain error.

¶ 11 The parties agree that defendant's conviction cannot stand, but disagree on the issue of retrial. The double jeopardy clause prohibits a successive trial for the purpose of affording the prosecution another opportunity to supply evidence it failed to muster in the first proceeding. *People v. Olivera*, 164 Ill. 2d 382, 393 (1995). The double jeopardy clause does not preclude retrial of defendant where his conviction is set aside because of an error in the proceedings leading to his conviction, rather than an evidentiary insufficiency. *People v. Mink*, 141 Ill. 2d 163, 173 (1990).

¶ 12 Defendant claims that, outside of the presumption, the evidence was insufficient to prove his guilt, while the State responds that it proved defendant guilty even absent the presumption. In reviewing the sufficiency of the evidence, the question is whether, upon 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. Beauchamp*, 241 Ill. 2d 1, 8 (2011). In a bench trial, it is for the trial court, sitting as the trier of fact, to determine the

credibility of the witnesses and the weight to be given to their testimony, to resolve conflicts in the evidence, and draw reasonable inferences therefrom. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 233 (2009).

¶ 13 Here, the State presented testimony from Wheeler that she observed defendant place items from the store shelf into his basket, and then into his pockets. He carried these items past the last point of purchase, but not outside the store, at which point Wheeler called out to contact the police. She provided the responding officer with a description of defendant and the direction in which he was walking. When confronted, he told the officer that he had just been in the Family Dollar store. Defendant was identified by Wheeler as the offender, at which point he claimed that he was just "taunting" her. Viewing this evidence in the light most favorable to the prosecution, we find that a rational trier of fact could have found the essential elements present beyond a reasonable doubt without applying the section 16A-4 statutory presumption, and, thus, retrial would not constitute double jeopardy. *People v. Jordan*, 218 Ill. 2d 255, 274 (2006).

¶ 14 Accordingly, we reverse defendant's conviction for retail theft and remand the cause for retrial.

¶ 15 Reversed and remanded.