

No. 1-14-3103

**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. 14 CR 7795
	)	
JERRY GRASSO,	)	Honorable
	)	Vincent M. Gaughan,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE CUNNINGHAM delivered the judgment of the court.  
Presiding Justice Liu and Justice Connors concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* We affirm defendant's conviction for retail theft where the evidence showed that he intentionally stole plumbing parts and the only witness' testimony was neither improbable nor unsatisfactory.
- ¶ 2 Following a jury trial, defendant Jerry Grasso was convicted of retail theft and sentenced to 46 months' imprisonment. On appeal, defendant contends that the State failed to prove his guilt beyond a reasonable doubt where the testimony of the only witness was improbable, unsatisfactory, uncorroborated, and did not establish that defendant intended to deprive the store of merchandise without paying full retail value. We affirm.

¶ 3 At trial, Pernell Clark testified that he was working as a loss prevention investigator for Home Depot at 1232 West North Avenue in Chicago on February 14, 2014. At approximately 12:10 p.m., Clark observed defendant enter the store and present a receipt to a cashier, who gave him a water heater on a flatbed cart. Defendant pushed the cart to the plumbing aisle and went to the self checkout, where he took several bags used for carrying purchased items. Defendant returned to the aisle and put plumbing parts in the bags. He placed the bags on the water heater, pushed the cart to the exit, and showed a receipt to the store's greeter. With the cart, defendant walked through the vestibule to a driveway by the parking lot. Clark detained defendant, who did not attempt to flee, and determined that the receipt listed the water heater but not the plumbing parts. Clark generated receipts for the plumbing parts, which consisted of 86 items worth \$541.09. The new receipts and a photograph of the items were entered into evidence but were not included in the record on appeal.

¶ 4 On cross-examination, Clark stated that two security cameras in the plumbing aisle were not working on the day of the incident but that a camera by the exit recorded defendant leaving the store. Clark showed this footage to police officers and gave them a copy on a disk, but was later told the disk was blank. He was unable to produce a new copy because the store's camera system retained footage for a limited period of time. Clark acknowledged that at an earlier proceeding, he testified that defendant was detained "outside and in the vestibule" or "between the vestibule and the parking lot."

¶ 5 The jury found defendant guilty of retail theft. Subsequently, the court denied defendant's posttrial motions and sentenced him to 46 months in prison.

¶ 6 On appeal, defendant contends that the State failed to prove his guilt beyond a reasonable doubt where Clark's testimony was improbable and unsatisfactory. Defendant argues that he lacked the intent to deprive the store of merchandise without paying full retail value where he

stopped for the greeter and neither concealed the plumbing parts nor fled. Additionally, defendant urges that contradictions in Clark's testimony and a lack of corroborating evidence permit the inference that defendant was in the store and intended to pay or forgot to pay when he was detained.

¶ 7 The standard of review on a challenge to the sufficiency of the evidence is whether, after reviewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. The witnesses' credibility, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence are all the responsibility of the trier of fact. *People v. Milka*, 211 Ill. 2d 150, 178 (2004). The trier of fact is not required to disregard inferences which flow normally from the evidence, nor need it search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). Rather, a conviction will be reversed only if the evidence is so improbable or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 8 To sustain a conviction for retail theft, the State must prove that the defendant knowingly took possession of, transferred, or carried away merchandise offered for sale in a retail mercantile establishment with the intention of retaining the merchandise or permanently depriving the merchant of possession, use, or benefit without paying full retail value. 720 ILCS 5/16-25(a)(1) (West 2014). On appeal, defendant contends the evidence was insufficient to establish the element of intent.

¶ 9 A person acts intentionally when his conscious objective or purpose is to accomplish the result or engage in the conduct proscribed. 720 ILCS 5/4-4 (West 2014). For purposes of retail theft, the element of intent may be inferred from circumstantial evidence, including the character

of the defendant's actions and the circumstances surrounding the commission of the offense. *People v. Foster*, 168 Ill. 2d 465, 484 (1995); *People v. DePaolo*, 317 Ill. App. 3d 301, 307 (2000). The question of intent is for the trier of fact and its ruling should not be reversed on appeal unless inherently impossible or unreasonable. *People v. Jones*, 334 Ill. App. 3d 420, 424 (2002).

¶ 10 Defendant's intent to steal was established where he obtained empty store bags from the checkout area, proceeded to the inside of the store with a flat bed cart carrying a water heater, placed 86 items from the plumbing section inside the store bags, and passed the checkout areas without paying for the 86 bagged items. When stopped by the greeter, defendant showed his receipt for the water heater but indisputably had no receipt for the other 86 items in the store bags.

¶ 11 Furthermore, the minor inconsistencies in Clark's testimony as to the location at which he stopped defendant does not refute defendant's intent to steal. At trial, Clark testified that defendant took the merchandise outside the vestibule to a driveway by the parking lot. At an earlier proceeding, however, Clark testified that he detained defendant "outside and in the vestibule" or "between the vestibule and the parking lot." Notably, the intent to commit retail theft may be inferred even where the defendant never left the store. *People v. Hart*, 338 Ill. App. 3d 983, 994 (2003) ("[I]ntent may be proved absent a suspect's actually leaving the store where \*\*\* he removes the merchandise beyond the last known station for receiving payments."). Here, there is no dispute that defendant had passed the checkout area and was leaving the store. We find that it was neither unreasonable nor improbable for the jury to infer from defendant's conduct that he intended to take the 86 plumbing parts without paying for them.

¶ 12 For all the foregoing reasons, we affirm the judgment of the trial court.

¶ 13 Affirmed.