2015 IL App (2d) 131134-U
No. 2-13-1134
Order filed September 15, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 12-CF-2242
JANA N. JACKSON,	)	Honorable T. Clint Hull,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved defendant guilty beyond a reasonable doubt of retail theft: even without producing inventory records, the State sufficiently established that the merchandise in defendant's possession was from the stores where she was seen leaving without paying, so as to support the inference that she stole the merchandise.

¶ 2 Defendant, Jana N. Jackson, appeals her conviction of two counts of retail theft (720 ILCS 5/16-25(a)(1) (West 2012)). She contends that the State failed to prove her guilty beyond a reasonable doubt because it did not provide evidence that merchandise was missing from the stores where she allegedly took items without paying for them. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was indicted on two counts of retail theft in connection with items allegedly taken from the retail stores Gymboree and Carter's at an outlet mall in Aurora. In August 2013, a bench trial was held, during which the State proceeded on a theory of accountability.

¶ 5 The facts are generally undisputed. On November 8, 2012, Gymboree store manager Alissa Majchrowicz noticed a group of three women looking at children's clothing in the store. She provided the women with an in-store shopping bag and showed them various items, including a brown vest. While in the store, the women behaved suspiciously. One of them crumpled a paper bag, while another seemed to be watching Majchrowicz. The third woman seemed to have positioned herself so as to block Majchrowicz's view of the other women. Before the women left the store, they returned the shopping bag, containing items recommended by Majchrowicz, by leaving it in a bin by the cash register. When Majchrowicz asked if they were unable to find anything to purchase, they said that they would be back. They then left without purchasing anything. Majchrowicz called security because she was suspicious of the women. She was unable to identify any of the women in the courtroom.

¶ 6 That same day, Aurora police officer Michael Gomez was working as part of an operation to target retail-theft offenders at the outlet mall. He was stationed at the Gymboree store when he saw defendant walk to the back of the store and join two other women. One of the women had a stroller with a child in it. She pulled a paper bag from her purse and began to crumple it, causing people to turn and look in her direction. While the first woman was crumpling the bag, Gomez saw the second woman remove a brown-colored item from a rack and put it in her purse and also put a black bag into the stroller. The three women then walked to the front of the store, and one of them returned a Gymboree bag that had items in it. She did not

return the item in her purse. Gomez spoke to Majchrowicz, who informed him that the women had not bought anything but had returned a bag of clothing. He examined the clothing they had returned, called other police officers to ask them to look for the three women, and then left.

¶ 7 Gomez went to the parking lot and saw defendant outside of her vehicle. The other two women were also with the vehicle. On the ground near the rear passenger side of the vehicle were clothing tags, including tags from Carter's and Gymboree. One of the women was wrapping the child into a hooded blanket. Clothing from Gymboree and Carter's was found in the trunk. There were no receipts for the clothing. The items from Gymboree were identical to the items that one of the women had returned upon exiting the store and included a brown vest. Among the items from Carter's was a blue blanket. Defendant said that she had previously purchased the items and denied taking anything from a store.

¶ 8 Aurora police officer Catrell Webster was driving an unmarked car in the parking lot when he received a call from Gomez about the women. He observed three women who fit the description walking together, carrying bags. The women walked to defendant's vehicle, and defendant opened the trunk. The women then removed clothing from bags, pulled off tags, and placed the clothing in the trunk. The tags were dropped on the ground.

¶ 9 The items from the vehicle were taken to an empty store in the mall that the police used as a command post. Majchrowicz came to the command post and identified clothing, including the brown vest, as items from Gymboree. She valued the items at $175.22. At that point, she had no way to tell if the items had been purchased, and she generally could not state that she knew that the items were missing from the store. However, in regard to the vest, she said that the store had three of them left. One was in the bag the women left at the front of the store, and another was left on the rack, so she was able to say that a brown vest was missing from the store.

When asked to clarify that the brown vest was the only item she had reason to believe was missing from the store on November 8, 2012, she said "[f]rom an inventory count level, yes, I could say with my eye that that was something that I noticed that was gone."

¶ 10 Briana Vasquez, the manager of Carter's, also came to the command post and identified items as merchandise sold by her store, including two blankets worth $60.99, one of which was a hooded blanket without a tag and one of which was blue with a Carter's tag. She told the police that earlier in the day she had assisted defendant in the store by showing her a blanket and that, the last time she saw defendant, the blanket was in defendant's hands. The record indicates that Vasquez was referring to the blue blanket, although that is not entirely clear. Vasquez did not see defendant leave the store and did not know if she had the blanket with her when she left. She did not know how many blankets of that type were in the store that day and did not recall selling any blankets that day.

¶ 11 Aurora police officer Jay Ellis interviewed defendant. Defendant said that she drove to the mall with the other women. She admitted looking at a blanket in Carter's, but stated that she put it back on the rack. She denied stealing anything, but admitted that she was aware that one of the other women left Gymboree with a bag of clothing that was not paid for. Defendant admitted that she took possession of the bag of Gymboree clothing, knowing it to be stolen, and put it in the trunk of her vehicle.

¶ 12 The trial court found defendant guilty, stating that it could be inferred from the circumstantial evidence that the items were stolen from Carter's and Gymboree. Defendant's motion for a new trial was denied, and she was sentenced to 30 days in jail, 30 months of probation, and various fines and costs. Defendant appeals.

¶ 13 II. ANALYSIS

¶ 14 Relying primarily on *People v. Liner*, 221 Ill. App. 3d 578 (1991), defendant contends that the State failed to prove her guilty beyond a reasonable doubt because there was no evidence that items were missing from the stores' inventories.

¶ 15 A reviewing court will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). On a challenge to the sufficiency of the evidence, " 'the relevant question is 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.' " (Emphasis in original.) *Id*. (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This standard applies regardless of whether the evidence is direct or circumstantial, and circumstantial evidence meeting this standard is sufficient to sustain a criminal conviction. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 16 A person commits retail theft when he or she knowingly takes possession of or carries away merchandise displayed or offered for sale in a retail mercantile establishment with the intention of retaining such merchandise or of permanently depriving the merchant of the possession, use, or benefit of such merchandise without paying its full retail value. 720 ILCS 5/16-25(a)(1) (West 2012); *People v. DePaolo*, 317 Ill. App. 3d 301, 306-07 (2000). The elements of retail theft can be inferred from circumstantial evidence. *DePaolo*, 317 Ill. App. 3d at 307; *People v. Rucker*, 294 Ill. App. 3d 218, 226 (1998).

¶ 17 To sustain a conviction of retail theft by accountability, the State must show beyond a reasonable doubt that either before or during the commission of the offense, and with the intent to promote or facilitate its commission, the defendant solicited, aided, abetted, or agreed or

attempted to aid in the planning or commission of the offense. 720 ILCS 5/5-2(c) (West 2012); see also *People v. Rodgers*, 160 Ill. App. 3d 238, 240 (1987).

¶ 18 In *Liner*, the defendant's retail-theft conviction was reversed. There, the defendant admitted that he and an accomplice entered a store with the intent to steal a bottle of Seagram's liquor. The defendant created a diversion by shouting that his wallet had been stolen, and a police officer observed the accomplice hurry out of the store carrying what appeared to be a liquor bottle under his jacket. As the officer pursued him, the accomplice threw a bottle away. A search of the area revealed a broken bottle of Seagram's whiskey. *Liner*, 221 Ill. App. 3d at 578-79.

¶ 19 The Third District reversed the conviction, over a dissent, holding that the State failed to prove that the liquor bottle thrown by the accomplice was the property of the store. In doing so, the majority reasoned that the store clerk did not testify that any liquor was missing from the store, and the State did not introduce any evidence to connect that particular bottle to the store. The majority concluded that "something more" was required to demonstrate that the bottle was from the store and was not already in the accomplice's possession when he entered the store. *Id.* at 580.

¶ 20 Here, *Liner* is distinguishable. Unlike in *Liner*, where no evidence was provided to connect the merchandise to the store, here the items had tags associated with them from Carter's and Gymboree, and the store managers specifically identified the items as merchandise unique to their stores. They then connected the merchandise to defendant and the other women, who were in the stores looking at the same merchandise. The same items the women put in the bag that they returned at Gymboree were found in the trunk of defendant's vehicle, and a brown vest was specifically identified as missing from that store. At Carter's, defendant looked at a blanket that

later was found in her vehicle. Further, defendant admitted that she took possession of a bag of stolen Gymboree merchandise and placed it in the trunk of her car. Thus, whereas in *Liner* the item was a generic item that could be purchased elsewhere and there was no specific evidence that it came from the store, here the items were specifically connected to the stores and to defendant.

¶ 21 Defendant also suggests that *People v. Drake*, 131 Ill. App. 3d 466 (1985), requires evidence of store inventories to show that items were stolen. There, the defendant was found with clean metal files bearing Ace Hardware stickers. The defendant claimed to have found the items on the ground behind a business. A local Ace Hardware store verified that the stickers matched their inventory. The file section of the store had three empty hooks, and an inventory taken three days earlier did not list files as an item that needed to be reordered. The defendant had been seen in the store after the date of the inventory, but had not bought anything. We affirmed, finding that the circumstantial evidence was sufficient to convict the defendant.

¶ 22 Contrary to defendant's suggestion, *Drake* did not hold that inventories or store records were necessary to prove that a retail theft occurred. Instead, *Drake* illustrates that circumstantial evidence connecting a defendant to the items taken is sufficient. As previously discussed, that was present here. Considering the evidence as a whole, the trial court was able to reasonably infer that defendant assisted in taking the items. Accordingly, the State proved defendant guilty beyond a reasonable doubt.

¶ 23 III. CONCLUSION

¶ 24 The State proved defendant guilty beyond a reasonable doubt. Accordingly, the judgment of the circuit court of Kane County is affirmed. As part of our judgment, we grant the

State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 25 Affirmed.