

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-CM-4869
ALICE SORENSEN,)	Honorable
Defendant-Appellant.)	Elizabeth K. Flood, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* The State proved defendant guilty beyond a reasonable doubt of retail theft: the trial court was entitled to credit the store employee's testimony over defendant's, and in any event a video showed defendant hiding the merchandise almost immediately before leaving the store, allowing the court to infer that she intended to steal it.

¶ 2 Defendant, Alice Sorensen, appeals her conviction 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.

We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged with retail theft in connection with the concealment of packages of ink-remover wipes from a Menard's store on November 7, 2012. A bench trial was held.

¶ 5 A transcript of proceedings from the bench trial is not included in the record. Instead, the parties filed and jointly signed a “Bystander’s Report.” The report is not certified by the trial court as required by Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005). However, we accept the document as an agreed statement of facts under Illinois Supreme Court Rule 323(d) (eff. Dec. 13, 2005). See *People v. Morales*, 343 Ill. App. 3d 987, 989 (2003).

¶ 6 According to the agreed facts, Aaron Senger, a loss-prevention officer at Menards, was involved in a previous incident with defendant in which he observed her place two greeting cards in her purse, walk past the cash registers, and proceed to exit the store. When Senger stopped defendant, she apologized for taking the cards.

¶ 7 On November 7, 2012, Senger saw defendant enter the store and immediately recognized her. He observed her place two small packages of wipes in her purse. Defendant later went to the bathroom, taking her purse with her. When she exited the bathroom, she removed the packages from her purse and placed them on the child seat of the cart with her purse on top of them. Senger then watched her proceed past the cash registers without paying for them. Senger testified that he stopped defendant before she left the store, that she pushed the cart into him, and that she tried to remove her purse from on top of the packages only after he introduced himself.

¶ 8 Senger testified that an individual is still in the store when she passes the registers. A person can pass the registers to the customer-service area and must pass by the exit doors to approach that area. Customers typically do not make purchases at the customer-service desks.

¶ 9 The State introduced a video of security footage. The video shows defendant picking up the packages and placing them in the open outside pocket of her purse. At times, close-up camera views from above show the packages partially visible in her purse. The packages do not appear to be resting on top of the purse or to be clearly visible from other angles. Other times,

defendant's hand blocked the view of them. A man (whom the parties refer to as defendant's husband) later joined her and placed some items in the cart. When defendant went to the bathroom, she did not return for over 13 minutes. When she came out, she placed the packages under her purse on the seat of the cart. Because the video is of poor quality, it is difficult to see exactly how the packages were situated. Defendant and her husband then went through a checkout lane and paid for the items that defendant's husband had placed in the cart. Defendant's husband exited the store, and defendant pushed the cart slightly past the exit door. As she did so, she removed her purse from the cart. The video then ends. It does not show her confrontation with Senger.

¶ 10 Defendant testified that she picked up the packages and put them on top of her purse because she did not want them to fall through the slots in the cart. She felt sick and went to the restroom, where she stayed for some time. When she came out of the restroom, she realized that the packages had fallen into her purse. She removed them and placed them under the child seat on the cart so that they would not fall out and placed her purse on top of them with the corners peeking out. She forgot about the packages at the cash register because she felt sick, but as she was returning the cart, she removed her purse and saw the packages. Defendant intended to leave the packages in the cart and let an employee by the cart return know that they were still there. When Senger stopped her, her purse was around her arm.

¶ 11 In regard to the previous incident, defendant testified that she had hidden two cards under her purse because she did not want her husband to see them. She said that she intended to pay for them at the customer-service desk so that he would not see the cards, but that Senger stopped her before she could do so. According to defendant, she explained what she was doing, and Senger let her go.

¶ 12 The trial court found defendant guilty based on the credibility of the witnesses, finding that, because defendant purposely removed the packages from her purse and put them under the seat only a few minutes before going through the checkout lane, it was unbelievable that she forgot about them, and she must have intended to steal them when she failed to pay for them. The court also found that the way defendant hid the wipes was identical to how she hid the cards during the prior incident. Defendant's motion for a new trial was denied and she appeals.

¶ 13

II. ANALYSIS

¶ 14 Defendant contends that the video contradicts Senger's testimony, defeating the State's proof that she intended to permanently deprive Menard's of the packages.

¶ 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)).

¶ 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. Intent can also be inferred where a defendant conceals merchandise and removes it past

the last known station for receiving payments. 720 ILCS 5/16-25(c) (West 2012); *People v. Hart*, 338 Ill. App. 3d 983, 994 (2003).

¶ 17 Here, the court reasonably found that defendant's testimony lacked credibility based on the proximity in time between her concealing the packages and her passing through the checkout lane. Defendant contends that Senger's testimony was false based on the videotape, arguing that the packages were clearly visible as she navigated the store and that the video clearly shows her removing her purse from the cart before she encountered Senger. However, contrary to defendant's testimony that she placed the packages on top of her purse, the video shows the packages inside of the purse, partially visible only upon close-up shots from some camera angles. The video also does not show defendant's encounter with Senger and does not conflict with Senger's testimony that defendant pushed the cart at him when confronted. Whether her purse was in or out of the cart at that time was not a crucial fact.

¶ 18 The mere existence of conflicts in the evidence does not by itself require reversal, and the resolution of the conflicts in the evidence and the credibility of the witnesses is the province of the trier of fact. *People v. Ellzey*, 96 Ill. App. 2d 356, 358-59 (1968). Here, the trial court was free to give greater weight to Senger's testimony. In any event, as the court noted, the video shows defendant concealing the packages almost immediately before leaving the store. Clearly, the court could infer that defendant intended to steal the packages.

¶ 19 III. CONCLUSION

¶ 20 The evidence was sufficient to prove 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).

¶ 21 Affirmed.