

No. 1-14-2124

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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. 13 C5 50770
	)	
SYLVESTER CLEMONS,	)	Honorable
	)	John Joseph Hynes,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Presiding Justice McBride and Justice Cobbs concurred in the judgment.

**O R D E R**

¶ 1 Held: Evidence sufficient to convict defendant of retail theft.

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¶ 2 Following a 2014 bench trial, defendant Sylvester Clemons was convicted of retail theft and sentenced to 360 days' jail with fines and fees. On appeal, defendant contends that there was insufficient evidence to convict him beyond a reasonable doubt. We affirm.

¶ 3 Defendant and codefendant Letrece Lanier were charged with felony retail theft for allegedly, on or about September 24, 2013, taking from retail merchant CVS Pharmacy "various items" worth over \$300 with the intent to retain, or permanently deprive the merchant of, that merchandise. Defendant and codefendant were tried in simultaneous bench trials.

¶ 4 At trial, Patrytjusz Svczerba testified that he was the manager of the CVS store at 143<sup>rd</sup> Street and Wolf Road. He was working on the day in question when he saw defendant and codefendant together in the "diet aisle" of the store "taking some merchandise," clarifying that codefendant was holding a bag and "taking something." Defendant was asking various questions of the pharmacy employees, though Svczerba could not hear what he was asking. Svczerba went to the vestibule – after the last point of sale – to confront defendants as they left. Defendant went into the vestibule first, asking Svczerba if the store was hiring while codefendant left the store. Defendants left the store without Svczerba seeing either pay for anything, and the security alarm was triggered as codefendant exited. While neither was holding anything in his or her hands, codefendant had a purse on her arm. When Svczerba asked her if she had forgotten to pay for anything, she was silent while defendant replied that she did not. Defendants went together to a beige car and left, going south on Wolf Road.

¶ 5 Svczerba phoned the police, and an officer arrived. A few minutes later, the officer drove Svczerba to another location where he saw the beige car and defendants. Svczerba saw in the trunk of the car several Five Hour energy shots, which CVS sells, and "a couple [of] nasal

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sprays." The officer brought Svczerba and the items back to the store, where the items were scanned at a cash register to produce a receipt of their retail prices – totaling \$649.67 – and the receipt was given to the officer. Svczerba checked the shelf where the energy shots had been and found it was "totally empty," while it had not been empty before defendants were in the store. Svczerba authenticated the receipt and photographs of the interior of the beige car's trunk and of codefendant's purse found in the car as accurate depictions.

¶ 6 On cross-examination, Svczerba testified that codefendant was placing items in her purse and then was joined by defendant who did the same. Svczerba could not recall telling the police that defendant as well as codefendant placed items in the purse. Svczerba had watched the store security video and admitted that "you cannot see him putting anything in the purse." Svczerba reiterated that defendant was talking to the pharmacy staff as codefendant was in the diet aisle, and that defendant passed the cashiers and went into the vestibule before codefendant, though they both entered the car together. When shown security video, Svczerba testified that defendants were together in the diet aisle before defendant went to the pharmacy area of the store and then left, and Svczerba admitted that this was the only or best video showing defendants together. Svczerba did not count items as he walked through the store aisles, nor did he check the store's sales records after the incident, so he was uncertain how many packages of energy drinks had been on the shelf before defendants arrived. When the recovered packages were returned to the store, it took more than one bag to do so. The packages had CVS stickers, and Svczerba saw the stickers on the packages recovered from the beige car. However, Svczerba did not recall mentioning the stickers to the police and did not photograph the stickers on the packages at issue because he believed the police had photographed them.

¶ 7 On redirect examination, Svczerba reiterated that the video showed defendants together before they separated. The store does not have video of every aisle and there was not a camera aimed directly along the diet aisle. The security alarm did not sound when codefendant entered the store but sounded as she left. Svczerba reiterated that, when he asked her if she forgot to pay for anything, she did not answer while defendant said that she did not have anything.

¶ 8 Police officer Anthony Carone testified that he went to the CVS store on the day in question in response to a report of a retail theft. Upon arriving, he met with manager Svczerba, then radioed a description of a man and a woman in a small beige sedan driving south on Wolf Road. When another officer reported a short time later that such a vehicle had been stopped at 157<sup>th</sup> and Wolf Road, Officer Carone and Svczerba went to that location. Upon arriving there, Officer Carone saw that the man and woman from the stopped beige sedan were defendant and codefendant, and Svczerba identified them as "the two he had from the store." Officer Carone saw another officer open the trunk of the sedan and find a "large quantity of energy drinks [of the] Five Hour brand." Svczerba identified the energy drinks as CVS merchandise, and Officer Carone brought them back to the store.

¶ 9 On cross-examination, Officer Carone reiterated that the recovered CVS merchandise was found in the trunk, not on defendant's person. He could not recall how many packs of energy drink bottles were found in the trunk, but when he refreshed his recollection, it was 32 six-packs. He could not carry such a quantity without a bag. Defendant was not seen on store video carrying any of the six-packs, and none of the six-packs bore CVS tags or markings.

¶ 10 Defendants' motions for directed findings were denied.

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¶ 11 Defendant and the State stipulated that Officer Carone's report did not mention that Svczerba saw defendant put something in codefendant's bag. The video was admitted into evidence as defendant's exhibit, without objection.

¶ 12 Following closing arguments, the court found defendant and codefendant guilty of misdemeanor retail theft, finding in relevant part that defendants were "obviously doing something in concert together with regards to that purse, you can see it from the video," defendant was distracting people, and after codefendant's purse was "bulging," defendant "spoke up on her behalf and said that she didn't have anything or she didn't forget to pay anything" before defendants entered the same car and drove away together. The court found insufficient evidence of the amount of merchandise stolen. The court proceeded immediately to sentencing, where defendant received 360 days of jail with fines and fees. Defendant's post-trial motion arguing insufficiency of the evidence was denied, and this appeal followed.

¶ 13 Defendant contends that there was insufficient evidence to convict him of retail theft beyond a reasonable doubt.

¶ 14 The Criminal Code (720 ILCS 5/1-1 *et seq.* (West 2012)), provides that a defendant is legally accountable for another's 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.

When 2 or more persons engage in a common criminal design or agreement, any acts in the furtherance of that common design committed by one party are considered to be the acts of all parties to the common design or agreement and all are equally

responsible for the consequences of those further acts. Mere presence at the scene of a crime does not render a person accountable for an offense; a person's presence at the scene of a crime, however, may be considered with other circumstances by the trier of fact when determining accountability." 720 ILCS 5/5-2(c) (West 2012).

A criminal design or agreement may be inferred from the actions of the parties and the surrounding circumstances, including the defendant's presence at the scene, maintaining a close affiliation with the companion after the crime is committed, flight from the scene, and failure to report the crime. *People v. Jones*, 2015 IL App (1st) 142597, ¶¶ 22, 27.

¶ 15 On a claim of insufficiency of the evidence, we must determine whether, taking 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. *In re Q.P.*, 2015 IL 118569, ¶ 24. It is the responsibility of the trier of fact to weigh, resolve conflicts in, and draw reasonable inferences from the testimony and other evidence, and it is better equipped than this court to do so as it heard the evidence. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 59. We do not retry the defendant – we do not substitute our judgment for that of the trier of fact on the weight of the evidence or credibility of witnesses – and we accept all reasonable inferences from the record in favor of the State. *Q.P.*, ¶ 24. The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; instead, it is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *Jonathon C.B.*, ¶ 60. The trier of fact is not required to disregard inferences that flow normally from the evidence, nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt, nor to find a witness was not credible merely because the defendant says so.

*Id.* A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Q.P.*, ¶ 24.

¶ 16 Here, taking the evidence in the light most favorable to the State as we must, we cannot find that no rational trier of fact would find defendant guilty of retail theft. Firstly, defendant contends that there was insufficient evidence that the items from the trunk of the sedan had been taken from the CVS. However, store manager Svczerba testified that the shelf holding the Five Hour energy drinks was not empty before defendants were in the store while it was completely empty afterwards, he saw defendants removing items from the shelf in that area but then not paying for any merchandise before they left the store, and he checked that the recovered items bore CVS stickers. The video is consistent with Svczerba's account insofar as defendants were together in the diet aisle for several seconds, including while codefendant's purse was unslung from her shoulder, before defendant went to the pharmacy area, and defendants exited the store together – through the entrance doors rather than the exit doors – and interacted with Svczerba on the way out. Defendant also contends that there is insufficient evidence he acted in concert with codefendant in her purported theft. However, he was clearly with her: they were together in the diet aisle, they left the store together, he answered for her when Svczerba confronted her, and they both entered the same car and left the scene together. Moreover, the evidence that defendant asked the pharmacy staff several questions while codefendant was in the diet aisle, then asked Svczerba about a job in the vestibule as codefendant exited the store, supports a reasonable conclusion that he was assisting her in her theft by distracting store employees. Thus, assuming *arguendo* that we disregard Svczerba's testimony to seeing both defendants placing items in her purse, there was nonetheless sufficient evidence to convict defendant of retail theft.

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¶ 17 Accordingly, the judgment of the circuit court is affirmed.

¶ 18 Affirmed.