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Carla Bender
4th District Appellate
Court, IL

2016 IL App (4th) 150894-U

NO. 4-15-0894

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
DAWN GOLDSBERRY,	)	No. 13CM1643
Defendant-Appellant.	)	
	)	Honorable
	)	Chris Perrin,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Harris and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was sufficient to support the jury's guilty verdict for the offense of retail theft on a theory of accountability, and the trial court did not err by instructing the jury using the applicable pattern instruction describing defendant's responsibility for the act of another.

¶ 2 Defendant, Dawn Goldsberry, appeals her conviction of one count of retail theft (720 ILCS 5/16-25(a)(1) (West 2012)). She contends the State failed to prove her guilty beyond a reasonable doubt because it did not provide evidence that she actually took items from the store without paying. She also contends the trial court erred in giving a misleading instruction to the jury regarding her responsibility for another's conduct. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On October 24, 2013, the State charged defendant with retail theft (720 ILCS 5/16-25(a)(1) (West 2012)), and soon thereafter amended the complaint to include the theory of accountability language. The State alleged defendant, "or one for whom she was legally responsible," knowingly took possession of merchandise from Walmart without paying. Defendant pleaded not guilty and the case proceeded to a jury trial.

¶ 5 First to testify for the State at trial was David Kehoe, an asset protection associate for Walmart. He said on September 4, 2013, he was on duty and in the security office operating the "pan, tilt, zoom camera." He said he witnessed a retail theft on camera. He "pulled the video from [the] surveillance system" and gave it to the police. According to Kehoe, the surveillance video showed two females, defendant and a codefendant, Ashley White, shopping together in the cellular telephone and headphone aisle in the electronics department. (We note the video recording was shown to the jury at trial, but it is not part of the record on appeal, and therefore, this court has not had the opportunity to review the video.) White took two pairs of headphones, removed the packaging, and began walking away as she put the headphones in her purse. Defendant and White walked to the home supply aisle, where the wax melts and pictures frames are located. Kehoe said he watched them put candle wax in the bottom of the cart, under a carpet-cleaner box. They proceeded to the self-checkout. They both removed the items from the shopping cart. Defendant scanned the carpet cleaner and placed it back in the cart. White scanned two children's clothing items, but put other clothing items not scanned into the bag. Neither one scanned the headphones or the candle wax. Defendant paid for the items scanned, but both defendant and White passed all points of sale with unpaid merchandise. Kehoe said he approached them at the exit.

¶ 6 On the "training receipt" from the transaction, Kehoe found 21 unpaid items having a cash value of $121.54. Kehoe explained a "training receipt" is a receipt printed and used by the store to document the items not paid for during a transaction. This particular "training receipt" included the wax, headphones, and children's clothing not purchased by defendant or White. According to Kehoe, defendant was walking ahead of White during White's concealment of the first pair of headphones, but defendant was in close proximity to White during her concealment of the second pair of headphones, pushing the cart at the time.

¶ 7 Springfield police officer Terry Day testified he responded to Walmart for the retail theft. He said he reviewed the video, which showed defendant and White in the store. He said it appeared defendant blocked the camera while White removed items from the packaging. When asked if he observed the two at the check-out and whether it appeared they had scanned all of the items in their cart, Officer Day said, "[i]t didn't appear, from the video, that all items were scanned, no." He said he observed the two go beyond all points of sale without paying for the merchandise. The State rested.

¶ 8 Ashley White testified on defendant's behalf. She said she and defendant were friends, and on September 4, 2013, they decided to shop together at Walmart, using one shopping cart. They each did their own shopping. White said she did not pay for any merchandise. She said she never mentioned to defendant that she intended to steal items from Walmart. According to White, defendant did not see White secrete headphones in her purse. White said she was arrested for retail theft but pleaded guilty to criminal damage to property.

¶ 9 Defendant also testified. She said she paid with her debit card for the carpet cleaner and two T-shirts. She said she did not know White had stolen any merchandise. The first time she was made aware of the theft was when Kehoe stopped them at the door. She denied

blocking the camera or acting as a "lookout" for White. She admitted, as a former Walmart employee, she was familiar with Walmart's use of video surveillance to detect theft. Defendant said, while in the asset protection office, she told Officer Day she did not take any merchandise. Nevertheless, she was arrested for "being the lookout."

¶ 10 On cross-examination, defendant denied hearing White "rip open a sealed, plastic box when [she was] standing right next to her." She said she did not notice her receipt was missing 21 items. Defendant rested.

¶ 11 After considering counsels' arguments and the applicable instructions, the jury found defendant guilty of retail theft. Defendant filed a posttrial motion, challenging the sufficiency of the evidence and the introduction of the jury instruction at issue in this appeal. The trial court denied defendant's motion and sentenced her to 1 year of conditional discharge and 50 hours of community service with a stayed 60-day jail term.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 A. Sufficiency of the Evidence

¶ 15 Defendant first argues the State failed to present sufficient evidence to prove she was accountable for White's actions. She claims the State presented no evidence to demonstrate she knowingly took items from the store without paying, or that she assisted White in doing so.

¶ 16 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.) *Collins*, 106 Ill. 2d at 261 (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).

¶ 17 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. *In re Q.P.*, 2015 IL 118569, ¶ 24.

¶ 18 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.*, 2011 IL 107750, ¶ 60. The trier of fact is not required to disregard inferences that flow normally from the evidence, or to seek all possible explanations consistent with innocence and elevate them to reasonable doubt, or to find a witness was not credible merely because the defendant says so. *Jonathon C.B.*, 2011 IL 107750, ¶ 60. "We will not reverse a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory that it raises a reasonable doubt of the defendant's guilt." *People v. Evans*, 209 Ill. 2d 194, 209 (2004).

¶ 19 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).

¶ 20 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, 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).

¶ 21 Specifically, the accountability statute provides a defendant is legally accountable for another's conduct when:

> "[E]ither 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.

¶ 22 Here, viewing the evidence in the light most favorable to the State, as we must, we find a rational trier of fact could find defendant guilty of retail theft. The testimony and the video recording (according to the testimony of the witnesses) showed White removing two pairs of headphones from the packaging and placing those items in her purse. Kehoe added he recalled defendant looking at White as she put one pair of headphones in her purse. Officer Day testified it appeared to him that defendant was blocking the camera while White removed the packaging and placed the headphones in her purse. Although defendant denied knowingly blocking the camera, she admitted she was standing next to White when White opened the package and placed the merchandise in her purse. Kehoe identified 21 items that were unpaid after defendant and White passed all points of sale.

¶ 23 Given the evidence presented, the jury could reasonably conclude defendant was legally accountable for White's theft of merchandise. Defendant admitted she previously worked at this particular location and was familiar with the video cameras Walmart used to detect theft. She and White traveled to Walmart together, intending to shop together, and used one shopping cart. After completing their shopping, they proceeded to the same checkout. White scanned only two clothing items, but she put more than two items in the shopping bag, while defendant stood by and eventually paid for the scanned items. Although defendant denied knowing White intended to steal merchandise from Walmart, the jury could reasonably disregard her testimony and draw the inference from the circumstantial evidence that she indeed aided and abetted White

in the commission of retail theft. See *People v. Comage*, 303 Ill. App. 3d 269, 275 (1999) (the jury was not required to believe the defendant's testimony). In sum, we find the record contains sufficient evidence, when viewed in the light most favorable to the prosecution, to support a rational trier of fact's conclusion the State proved the essential elements of the crime, including accountability, beyond a reasonable doubt.

¶ 24 Although referenced in her brief, defendant makes no clear argument challenging (1) the State's amendment of the charging instrument to include the accountability language, or (2) the application of the silent witness theory. First, in her brief, defendant merely summarized the First District's holding in *People v. Zajac*, 244 Ill. App. 3d 42 (1991), a case addressing an amendment to a driving-under-the-influence complaint. Defendant then stated the following: "Accordingly, the defendant should be granted arrest of judgment and the conviction." Defendant did not offer any argument, analysis, or explanation as to how *Zajac* justifies the entry of an arrest of judgment in her case.

¶ 25 Second, defendant likewise summarized the law on the silent witness theory as specified in this court's decision of *People v. Sykes*, 2012 IL App (4th) 111110, ¶ 34. After her summation, she provided no argument, analysis, or explanation as to how the silent witness theory applied to this case.

¶ 26 Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013), requires an appellant's brief to contain argument supported by citations of the authorities and the pages of the record relied on. "A failure to cite relevant authority violates Rule 341 and can cause a party to forfeit consideration of the issue." *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 23. This court "is not a depository in which the appellant may dump the burden of argument and research." (Internal quotation marks omitted.) *Kic*, 2011 IL App (1st) 100622, ¶ 23. The issue defendant raises is not

clearly articulated, and we decline to *sua sponte* state the issue, formulate an argument, and then make a decision. See *Skidis v. Industrial Comm'n*, 309 Ill. App. 3d 720, 724 (1999) ("Statements unsupported by argument or citation to relevant authority will not be considered, and this court will not become the advocate for, as well as the judge of, points an appellant seeks to raise."). Thus, based on her mere summations, her brief violates Rule 341(h)(7), and accordingly, we deem the arguments relating to (1) the amendment of the complaint and (2) the silent witness theory forfeited.

¶ 27 B. Jury Instruction

¶ 28 Defendant next contends she was denied a fair trial when the trial court gave the jury, over her objection, an unmodified jury instruction that was "misleading, confusing, prejudicial and an incorrect statement of the law." Defendant's entire argument addressing this issue, as stated in her brief, is as follows:

> "This instruction does not state the law. First it does not provide the words intent or knowingly legally responsible for the person. It does not refer to the offense pled guilty by the co-defendant White of criminal damage to property which was confusing to the jury in determining the accountability if any of the defendant. By reason of the incorrect statement of law and no factual basis as to the instruction, the defendant was prejudiced and denied a fair trial."

¶ 29 White, like defendant, was charged with retail theft; however, she pleaded guilty to criminal damage to property as part of her plea agreement. Given these facts, the State tendered jury instruction No. 5.06. See Illinois Pattern Jury Instructions, Criminal, No. 5.06 (4th ed. 2000) (hereinafter, IPI Criminal 4th No. 5.06). The instruction read: "A person who is legally

responsible for the conduct of another may be convicted for the offense committed by the other person even though the other person, who it is claimed committed the offense, has been convicted of a different offense."

¶ 30 Jury instructions are intended to guide the jury and assist in its deliberations and in reaching a proper verdict. *People v. Parker*, 223 Ill. 2d 494, 501 (2006). "The task of a reviewing court is to determine whether the instructions, considered together, fully and fairly announce the law applicable to the theories of the State and the defense." *People v. Mohr*, 228 Ill. 2d 53, 65 (2008). We review *de novo* whether jury instructions accurately convey the law. *People v. Watt*, 2013 IL App (2d) 120183, ¶ 30 (citing *Parker*, 223 Ill. 2d at 501).

¶ 31 The instruction at issue, IPI Criminal 4th No. 5.06, accurately states the law in that it mirrors the instruction approved by our supreme court. Likewise, the instruction is applicable given the facts of this case. Defendant's argument, as stated in her brief, does not cite authority to support her contentions or explain the bases for her position that (1) certain language was wrongly omitted from the instruction, (2) the instruction should have named the offense to which White pleaded guilty, or (3) the instruction included an incorrect statement of law. Finding no error, we affirm the trial court's decision to instruct the jury using IPI Criminal 4th No. 5.06.

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 34 Affirmed.