2017 IL App (1st) 151354-U

No. 1-15-1354

Order filed December 12, 2017

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County,
	)	
v.	)	No. 14 CR 4062
	)	
DANNY JOHNSON,	)	Honorable
	)	Timothy J. Chambers,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Neville and Justice Mason concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not commit plain error by making incomplete Rule 431(b) inquiry of potential jurors during *voir dire*; defendant forfeited claim, and evidence was not closely balanced for plain-error purposes.

¶ 2 Following a 2015 jury trial, defendant Danny Johnson was convicted of aggravated battery and retail theft and sentenced to concurrent prison terms of four and three years respectively. On appeal, defendant contends that the court erred by not asking potential jurors all

the *voir dire* inquiries required by Supreme Court Rule 431(b) (eff. July 1, 2012). For the reasons stated below, we affirm.

¶ 3 Defendant was charged with aggravated battery for, on or about February 7, 2014, knowingly causing bodily harm to Rolando Noriega by striking Noriega about the body when he knew Noriega to be a merchant – an employee of a Menard's store – who had detained defendant for an alleged retail theft. Defendant was also charged with retail theft for knowingly taking possession of merchandise – drill bits – displayed, held, stored, or offered for sale in a retail mercantile establishment – the Menard's store – on the same date with the intent of retaining the merchandise or depriving the merchant permanently of possession, use or benefit of the merchandise without paying the full retail value thereof, which did not exceed $300.

¶ 4 Before *voir dire*, the court told the venire that defendant is presumed innocent of the charges against him, that the State bears the burden of proving him guilty beyond a reasonable doubt, that defendant is not required to testify or present any witnesses, and that if defendant chooses not to testify it cannot be held against him. During *voir dire*, the court asked the first panel of potential jurors whether "anyone here *** has any quarrel with" the first principle, "any questions about" the second, "any issue with" the third, and "any quarrel with" the fourth, spreading of record after each question that nobody did. The court asked the second panel whether anyone had "any quarrel with" each of the four principles, spreading of record after each of the four questions that nobody did.

¶ 5 At trial, Anthony Rachuy testified that he was working as a security guard at a Menard's store, employed by a firm contracted by Menard's to provide security. One of his duties was using the store's video security system, with about 80 controllable cameras inside and outside the store and a "generally reliable" recording system constantly recording every camera. Rachuy

used the system to spot over 100 shoplifters in about a year and a half. His duties also included patrolling the store in plainclothes, focusing on high-theft aisles. If he saw anything suspicious while on patrol, he would go to the video system to watch the suspect by video.

¶ 6 At about 3:30 p.m. on February 7, 2014, Rachuy was watching the video system when he saw a person in a high-theft aisle with a high-theft item; a "three-pack of Irwin Unibits." At trial, Rachuy identified defendant as that man. Rachuy explained that Irwin Unibits was a set of drill bits for boring holes into metal, sold by Menards for about $55, and found by inventory analysis to be a high-theft item. On video, Rachuy saw defendant put the Unibits into his shopping cart and walk with the cart to another aisle. Focusing or "zooming" a camera on defendant, Rachuy saw him remove the Unibits from the cart, unsuccessfully try to open the hard-plastic package by bending it in half, and then return the Unibits to the cart. At this point, Rachuy had another security guard, Rolando Noriega, watch the video system while Rachuy went to observe defendant in person. He followed defendant for about a half-hour and did not see him remove the Unibits from the cart. When defendant lined up at a cash register, with the Unibits still in his cart, Rachuy returned to the video system. From a camera directly behind defendant, Rachuy saw him pick up the Unibits with his right hand, bring his right hand to his chest, open his coat with his left hand, put his right hand into his coat, and then lower both hands. The Unibits were no longer visible. One of the cameras had a view of the cash-register conveyor belt, but Rachuy did not see defendant place the Unibits on the belt to be purchased. Rachuy could also see defendant bagging his purchases but did not see him place the Unibits into the bag. He did not stop defendant upon seeing him put the Unibits in his coat pocket because "entering the last point of sale is part of [the] procedure;" that is, security procedures required allowing a suspect to pass the last point of sale without paying for a concealed item.

¶ 7 Once Rachuy saw defendant exit the store, he and Noriega approached defendant and identified themselves as store security. Defendant was next to his white Jeep near the store exit. Without touching defendant or his shopping cart, Rachuy told defendant that he had to return to the store. Defendant replied that he "didn't take shit." Rachuy repeated that defendant had to return to the store, but he replied that he was not going back inside. Rachuy told defendant that "we'll just need the bits back," but defendant maintained that he did not know what Rachuy was referring to and "never had no bits." When Rachuy repeated that defendant had to return to the store, he said that he would do so after putting his purchases in his car. Rachuy told him that he could bring his purchases with him into the store, but he insisted that he wanted to put them in his car. Defendant put his "stuff" in the car, entered it quickly, closed and locked the door, moved into the driver's seat, and put the Jeep in reverse. As he did so, Rachuy walked to the front of the Jeep, photographed its license plate, and phoned the police. Noriega was behind the Jeep when defendant reversed. Noriega grabbed the Jeep to avoid going underneath it. Defendant did not stop except momentarily to put the Jeep into forward gear, then drove away at at least 25 miles per hour with Noriega still holding onto the back of the Jeep. Defendant did not stop at the stop signs in the Menard's parking lot. He exited onto the street, and Rachuy lost sight of him.

¶ 8 Rachuy returned inside the store and unsuccessfully searched for the Unibits in the area of the cash register defendant used. He then completed a form to have Menard's security retain the relevant video recordings. Rachuy learned how many Unibits should be in inventory. He then went to the relevant aisle, counted the Unibits, and found his count to be one less than the indicated inventory of Unibits. Rachuy learned from the computer that the price of Unibits is $53.97 and thereby generated a receipt so reflecting. He identified that receipt at trial.

¶ 9 Rachuy later received a videodisk containing the video he requested, and he viewed the disk to confirm that it contained the video he saw earlier. He identified the disk at trial, and the disk was admitted into evidence without objection. The disk was shown in court while Rachuy testified. He indicated when defendant entered the store at about 2:47 p.m. and entered the aisle containing drill bits at about 2:59 p.m. He indicated when defendant stood with his empty cart near the Unibits and put a pack of Unibits into his cart. He indicated when defendant went into another aisle at about 3:29 p.m. and bent the Unibits package in an attempt to open it. Rachuy reiterated that he did not see defendant remove the Unibits from the cart before going to the cash register. Rachuy indicated when defendant, in line at the register, picked up the Unibits from the cart with his right hand, put his right hand into his coat, and then removed his empty hands from his coat. He indicated when defendant placed the merchandise in his cart – not including the Unibits – onto the conveyor belt. He indicated when defendant bagged his purchases at about 3:51 p.m., and when defendant left the store. He indicated when an outdoor camera showed defendant's car in front of the store, explaining that it did not show his and Noriega's interaction with defendant because the camera was pointed in the opposite direction at the store entrance. He indicated when the video showed Noriega near a parking-lot stop sign.

¶ 10 On cross-examination, Rachuy indicated with his hands how large the Unibits package was, and the parties and court agreed that he indicated about six or seven inches by about four inches. When defendant was at the cash register, Rachuy was a few feet behind him. When he was outside the store with defendant, he could not see into his shopping bags and had no chance to search them. A few minutes passed between confronting defendant outside and searching the area of the cash register. Rachuy was not aware when the Unibits in the aisle had been last counted to check against the recorded inventory. He admitted that the inventory would not reflect

a customer walking through the store with an item. On redirect examination, Rachuy testified that the recorded inventory would reflect the correct number of Unibits if defendant had purchased it. Rachuy reviewed defendant's recorded purchases, and no Unibits were on it. On recross examination, Rachuy testified that defendant's purchases totaled about $70 to $80. The count of Unibits would be short by one if a customer other than defendant had one in his or her cart, and Rachuy could not recall when a Unibits was next sold after the incident with defendant.

¶ 11 Rolando Noriega testified that, in February 2014, he had worked for a security firm that contracted with Menard's to provide security and assigned him to work as a security guard at a particular Menard's store. Noriega explained that Menard's preferred to prevent theft by using video cameras and well-trained guards, and thus had no detectors at the exit nor did it keep merchandise in locked cases. Noriega was trained to operate the store's video system, which had about 60 controllable cameras with a concentration on high-theft aisles. Such aisles contained expensive and small items that are easy to steal, such as tools.

¶ 12 At about 3 p.m. on February 7, 2014, Noriega was working in the Menard's store with Rachuy, with Noriega patrolling the store in plainclothes and Rachuy watching the video system. At about 3:30 p.m. Rachuy called Noriega to the video room, where he showed Noriega video of "a man who he suspected of trying to open a package." In particular, Noriega saw video of a man picking up a package of Unibits, which he knew to be a high-theft item, and then saw video of the same man in another aisle warping or twisting the Unibits package in an unsuccessful effort to open it. When the man could not open the package, he put it back in his cart. After seeing this video, Rachuy and Noriega agreed that Rachuy would follow the man in person while Noriega would watch by video. Noriega saw the man continue shopping, selecting several items and eventually entering a register line. Noriega confirmed by video that the Unibits was still in his

cart. On video, Noriega then saw the man put the package inside his coat with his right hand. Noriega moved a camera to see the area of the cash register and did not see the Unibits. The man then placed the merchandise in his cart onto the conveyor belt and paid for it. Noriega was "100 percent sure *** that the man [he] saw was committing a retail theft." Noriega and Rachuy then followed the man as he exited the store, passing the "final point of purchase." Noriega was certain that the man he was following was the man he saw on video warping the Unibits package, and he never saw the man purchase or pay for the Unibits.

¶ 13 When Noriega and Rachuy were outside the store, and the man was standing near a silver Jeep, they identified themselves as store security and told the man to "please step back into the store." Noriega now had a close view of the man, and at trial he identified defendant as that man. Defendant replied that he "didn't steal shit." Rachuy repeatedly told defendant to go back into the store, and defendant repeated that he did not take anything. Defendant said he wanted to put his things in the car, but when he did so, he also entered the car. Noriega approached defendant to "get him to step out" of the car. As Noriega was behind the Jeep, and Rachuy was photographing the Jeep's front license plate, defendant went into the driver's seat and reversed the Jeep. Noriega was already touching the Jeep when it started moving, and he was "getting pulled under the car" when it moved, so he grabbed the Jeep's luggage rack. Defendant continued reversing, and Noriega slid backwards on the icy pavement. He did not let go of the Jeep because he did not know if or when defendant would stop reversing. Defendant suddenly began driving forward, quickly enough to skid, and Noriega started sliding forward. He took a higher grip of the Jeep and pulled himself to his feet. Defendant kept driving fast, and did not stop at the three stop signs in the Menard's parking lot. When defendant was on the street, with Noriega still holding onto the Jeep, he was driving at about 35 miles per hour. He encountered

multiple intersections but did not stop to let Noriega let go, and Noriega would not let go due to defendant's speed. Noriega had called the police on his cellphone and kept the call open as he gripped the Jeep, but could not say where he was because he was unfamiliar with the area.

¶ 14 Defendant "swerved hard right" at another intersection, and Noriega almost fell off the Jeep. Defendant then stopped in an alley, but Noriega did not let go immediately because he feared that defendant would then run him over. Defendant exited the car, asked Noriega what "my problem" was, and told him that he would "beat the shit out of" him. When defendant approached Noriega, he leapt on defendant and detained him by holding him down with his left arm. Now able to check where he was, he told the police his location. Noriega denied punching, striking, or kicking defendant. He was unable to detain defendant for the police, as defendant slipped out of his jacket and shirt. Defendant walked towards the driver's door of the Jeep, but Noriega stood in the doorway and sat on the front seat to keep defendant from occupying it. Defendant tried to pull Noriega from the seat, threatened him that he "has something for" him in the trunk, and walked towards the Jeep's trunk. However, Noriega pushed defendant away from the trunk, then tried to grab him with both hands. Defendant and Noriega then moved towards the Jeep's front seat, and Noriega again sat in the driver's seat. As they moved towards the front of the Jeep, Noriega noticed a man, who he had never seen before, standing nearby and asked him to phone the police. When they were in the Jeep, defendant punched Noriega on the right side of his jaw, and Noriega grabbed both his arms. He again denied punching, striking, or kicking defendant. The police then arrived and, after conversing with Noriega, arrested defendant. At trial, Noriega identified a photograph of his face showing a scratch behind his left ear, and another photograph of his face showing swelling and scratches on the right side of his face. He did not have the scratches or swelling before meeting defendant that day.

¶ 15 On cross-examination, Noriega testified that while the interior security cameras were controllable, the outdoor cameras were stationary. He was directly behind the Jeep when defendant began reversing. His feet were briefly on the ground when defendant stopped reversing to go forward, but he did not let go of the Jeep's luggage rack because he "didn't know when he was going to stop. It's a matter of *** if I let go and he keeps reversing, what if I go under." He also feared that he would be injured by other cars moving in the parking lot if he let go. Noriega reiterated that defendant had threatened but not touched him when he leapt on defendant, and that defendant did not remove anything from the trunk because "I did not allow him to." Noriega received no medical treatment for his injuries. He was present when the police searched the Jeep, but did not see them search defendant's person, and he did not see the police recover the Unibits. While holding onto the Jeep, he could not see defendant inside the Jeep.

¶ 16 Arnulfo Vallejo testified that, at about 4 p.m. on February 7, 2014, he was in his backyard when his barking dog brought his attention to the alley behind his home. There, Vallejo saw defendant (who he identified at trial) and another man scuffling or fighting inside a "four-by-four" car. Defendant was in the driver's seat and the other man was in the passenger seat. Defendant struck the other man, once in the face and twice in the chest. The other man did not strike defendant, but only raised his hands in defense. The other man asked Vallejo repeatedly to call the police, and Vallejo did. Vallejo saw defendant and the other man exit the car, with defendant trying to flee the other man. Defendant said that he "didn't do anything," while the other man said "You're not going anywhere, the cops are on their way." Defendant then opened the trunk of the car and was reaching for "something like a stick" or baseball bat, so the other man closed the trunk lid. Defendant and the other man "ended up back in the car" and then the police arrived. Vallejo told one of the police officers what he saw, to ensure that the police knew

who the aggressor had been. He saw the police arrest defendant. Vallejo had not seen defendant or the other man before that day, and had not seen the other man since that day except in court.

¶ 17 On cross-examination, Vallejo admitted that he had a 2006 conviction for theft of labor services, for which he served some jail time and received conditional discharge. He had not seen the car arrive with defendant and the other man, and thus had not seen the entire interaction between them in the alley. For instance, he did not see the other man jump onto defendant. However, he heard the scuffle before he saw it. It was Vallejo's opinion that defendant was attempting to remove something from the trunk but the other man "didn't allow him to."

¶ 18 Police officer Matthew Graf testified that, at about 3:45 p.m. on February 7, 2014, he and another officer in a police car responded to multiple reports of a shoplifting or retail theft that escalated to a battery in progress. They went to a certain alley based on the reports, and Graf saw there a gray Jeep stopped in the alley, with two men in the front seat. Graf and his partner approached the Jeep, and Graf saw Noriega on top of defendant. The officers removed defendant and Noriega from the Jeep, and Noriega told them that he was a security guard at Menard's while defendant was a shoplifter. Defendant was "pretty angry and belligerent," while Noriega was visibly shaken but gave a coherent account. Graf also spoke with Vallejo to obtain his account of events. Graf arrested defendant and searched his person, and also searched the Jeep and surrounding area of the alley. Though he knew from speaking with Noriega that he was looking for the Unibits, he did not recover anything. Because February 2014 had been "pretty snowy," snow was "covering basically everything" in the alley that day.

¶ 19 Following arguments, instructions, and deliberations, the jury found defendant guilty of aggravated battery and retail theft.

¶ 20 Defendant's posttrial motion did not include a claim that the court violated Rule 431(b). Following the court's denial of the motion, it held a sentencing hearing and sentenced defendant to concurrent prison terms of four years for aggravated battery and three years for retail theft.

¶ 21 On appeal, defendant contends that the trial court erred by not asking potential jurors all the *voir dire* inquiries required by Supreme Court Rule 431(b). In particular, he argues that the court erred by not asking the prospective jurors whether they both understood and accepted each of the four principles in the Rule.

¶ 22 Before addressing this claim, we must note that defendant forfeited it by not raising it in the trial court. However, he argues that we may consider the claim as a matter of plain error. A plain error is a clear and obvious error that (1) occurred when the evidence was so closely balanced that the error alone threatened to change the result or (2) was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. *People v. Sebby*, 2017 IL 119445, ¶ 48. Failure to comply with Rule 431(b) is not a second-prong plain error unless the defendant shows that the Rule 431(b) violation actually produced a biased jury. *Id.*, ¶ 52. In determining whether the evidence was closely balanced for the first prong, we perform a commonsense and qualitative, rather than strictly quantitative, assessment of the entirety of the trial evidence in context against the elements of the charged offenses. *Id.*, ¶ 53; *People v. Belknap,* 2014 IL 117094, ¶¶ 50-53. Evidence is not closely balanced merely because a witness has a potentially impeaching background, nor because the evidence of guilt is circumstantial rather than direct. See *Belknap,* ¶¶ 55-56.

¶ 23 Supreme Court Rule 431 governs *voir dire* examination of potential jurors, and Rule 431(b) provides that:

> "The court shall ask each potential juror, individually or in a group, whether that juror understands and accepts the following principles: (1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that if a defendant does not testify it cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's decision not to testify when the defendant objects. The court's method of inquiry shall provide each juror an opportunity to respond to specific questions concerning the principles set out in this section." Ill. S. Ct. R. 431(b) (eff. July 1, 2012).

¶ 24 Under Rule 431(b), a court may not merely give "a broad statement of the applicable law followed by a general question concerning the juror's willingness to follow the law." Ill. S. Ct. R. 431, Committee Comments. As our supreme court has stated, "the language of Rule 431(b) is clear and unambiguous; the rule states that the trial court 'shall ask' whether jurors understand and accept the four principles set forth in the rule. The failure to do so constitutes error." *Belknap*, ¶ 45. It has found that "the trial court committed error when it failed to ask prospective jurors whether they *both* understood and accepted the principles set forth in Rule 431(b)." (Emphasis in original.) *Id.*, ¶ 46. "While *** it is arguable that the trial court's asking for disagreement, and getting none, is equivalent to the jurors' acceptance of the Rule 431(b) principles, the court's failure to ask the jurors whether they understood the principles is error in and of itself." *Id.*, ¶ 44. The supreme court has found clear error where the "court asked jurors whether they 'had any problems with' or 'believed in' those principles." *Sebby*, ¶ 49.

¶ 25 Here, we conclude that there was clear error under *Belknap* and *Sebby* – the court did not ask if the prospective jurors both understood and accepted each of the four Rule 431(b) principles – but not plain error as the trial evidence was not closely balanced.

¶ 26 The Criminal Code (Code) provides that a person commits the offense of aggravated battery when he "knows the individual battered to be [a] merchant who detains the person for an alleged commission of retail theft under Section 16-26 of this Code and the person without legal justification by any means causes bodily harm to the merchant." 720 ILCS 5/12-3.05(d)(9) (West 2014). Section 16-26 of the Code authorizes a "merchant who has reasonable grounds to believe that a person has committed retail theft [to] detain the person, on or off the premises of a retail mercantile establishment, in a reasonable manner and for a reasonable length of time" for prescribed purposes including "reasonable inquiry as to whether such person has in his possession unpurchased merchandise." 720 ILCS 5/16-26(a) (West 2014). The premises of a retail mercantile establishment include the establishment itself and the parking areas for the establishment. 720 ILCS 5/16-0.1 (West 2014).

¶ 27 A person commits the offense of retail theft when he knowingly "[t]akes possession of, carries away, transfers or causes to be carried away or transferred any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment with the intention of retaining such merchandise or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the full retail value of such merchandise." 720 ILCS 5/16-25(a)(1) (West 2014). For purposes of retail theft, if a person conceals upon his person or among his belongings "unpurchased merchandise displayed, held, stored or offered for sale in a retail mercantile establishment; and *** removes that merchandise beyond the last known station for receiving payments for that merchandise in that retail mercantile

establishment, then the trier of fact may infer that the person possessed, carried away or transferred such merchandise with" either of the aforesaid intentions. 720 ILCS 5/16-25(c) (West 2014). Merchandise is concealed if "although there may be some notice of its presence, that merchandise is not visible through ordinary observation." 720 ILCS 5/16-25(c) (West 2014).

¶ 28 Here, we begin our qualitative assessment of the evidence in light of the retail theft charge, as that is the focus of defendant's arguments on appeal. The video is clear that defendant had the Unibits in his shopping cart, belying his denial to Rachuy and Noriega that he ever had any bits. The video shows that defendant unsuccessfully tried to open the package of Unibits by twisting it between his hands. The key video shows defendant lining up at a cash register with the Unibits clearly visible, picking up the Unibits with his right hand, placing his right hand into his coat lapel and right pocket, and a few moments later handling various objects with both hands but with the Unibits no longer visible. The video shows that the merchandise defendant placed on the conveyor belt, and after purchase into bags, did not include the Unibits. It further shows defendant placing his bags into the cart, pushing the cart past other cash registers without stopping or dropping anything, and exiting the store. Lastly, Rachuy testified to searching the area of the relevant cash register for the Unibits but not finding them, and that the inventory of Unibits on display was one less than reflected in Menard's computer. While Rachuy's evidence is not definitive, as defendant notes, it is consistent with and corroborates the other evidence. It is reasonable to conclude from this evidence that defendant concealed the Unibits inside his coat at the cash register and walked past the last point of payment out of the store. Such actions fall precisely within the aforementioned statutory inference of intent.

¶ 29 Defendant places great emphasis on the fact that the Unibits were not found upon his arrest. However, Noriega testified that he could not see what defendant was doing inside the Jeep

while he was atop the Jeep, as he was holding on in fear for his life and was also on the phone with the police. Under such circumstances, we do not find that the reasonable inferences from defendant concealing the Unibits in his coat at the cash register and exiting the store are refuted or dispelled by the fact that the Unibits were not found after his arrest.

¶ 30 The circumstances after defendant exited the store corroborate his criminal intent in placing the Unibits inside his coat and leaving the store. When confronted by Rachuy and Noriega, after they duly identified themselves as store security, defendant resorted to subterfuge and flight by professing that he was merely placing his purchases in his Jeep but then entering the car and fleeing in reverse with Noriega directly behind his Jeep. He fled the store with Noriega gripping his Jeep. He had, but did not take, several opportunities to stop so that Noriega could safely let go, and he made a "hard" swerve before finally stopping in an alley.

¶ 31 Turning to the aggravated battery charge, Noriega gave a detailed account of defendant's violence towards him in the alley, and his account was corroborated by Vallejo. In light of Noriega and Rachuy earlier identifying themselves as store security, we find ample evidence of aggravated battery as charged. Also, defendant's violence and threats to Noriega further corroborate that his earlier actions in and around the store were not innocent but criminal.

¶ 32 As noted above, our supreme court recently addressed the analysis of when evidence is closely balanced in *Sebby*. Though the *Sebby* court found its evidence closely balanced, we find this case distinguishable from *Sebby*. In *Sebby*, "the outcome of th[e] case turned on how the finder of fact resolved a contest of credibility," because the State witnesses' "testimony was largely consistent, but so was the testimony of the defendant and his witnesses" and "neither the prosecution nor the defense accounts of that morning's events were fanciful." *Sebby*, ¶¶ 61-63. Here, first and foremost, there was no such credibility contest. The video evidence corroborates

the consistent accounts of Rachuy and Noriega, and Noriega's account of defendant's violence and threats in the alley is well-corroborated by disinterested bystander Vallejo. Also, while defendant notes that the video evidence is not a continuous view but spliced together from various cameras, we find no gaps in the key video evidence. The video of him holding the Unibits at the cash register before they disappear from view shows him placing other merchandise on the conveyor, while another video shows him placing merchandise on the conveyor and ends with him placing his bags into the cart, and finally another video begins with him placing his bags into the cart and shows him exiting the store.

¶ 33 Taking the entirety of the evidence in light of common sense, including the statutory inference, we conclude that the trial evidence was not closely balanced that defendant committed retail theft and aggravated battery. Accordingly, the judgment of the circuit court is affirmed.

¶ 34 Affirmed.