2017 IL App (2d) 150105-U
No. 2-15-0105
Order filed April 25, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. BRIANA TAYLOR, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Boone County. No. 13-CF-239 Honorable C. Robert Tobin III, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Schostok and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: Trial counsel was ineffective in failing to object to testimony and argument concerning matters barred by a motion *in limine*. Reversed and remanded.

¶ 2 Following a jury trial, defendant, Briana Taylor, was convicted of retail theft and sentenced to 120 days in jail, 30 months' probation, and ordered to pay $360.62 in restitution. 720 ILCS 5/16-25(a)(1) (West 2012). She appeals, challenging the sufficiency of the evidence and arguing that trial counsel was ineffective and that the restitution order must be corrected. We reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 On November 15, 2013, the State charged defendant with two counts of retail theft, alleging that, on October 26, and 29, 2013, defendant and two co-defendants knowingly stole liquor from Fiesta Market in Belvidere. After a surveillance video of the October 26, 2013, charge was lost, the State proceeded only on the October 29, 2013, count, which alleged that defendant stole less than $300 of merchandise, which was punishable as a Class 4 felony. 720 ILCS 5/16-25(f)(2) (West 2012).

¶ 5 On August 5, 2014, defense counsel filed a motion *in limine*, requesting that the court enter an order precluding Juan Vital, Fiesta Market's store manager, from testifying concerning his review of the October 26, 2013, surveillance video, which no longer existed, because defendant had no opportunity to review the video.

¶ 6 On September 18, 2014, the trial court granted the motion *in limine*, ordering that "the State shall not be permitted to obtain testimony of the content of the video surveillance records from October 26, 2013[,] except for the purpose of identification of [defendant] and unless [defense counsel] opens the door or any other exceptions under [Illinois Rule of Evidence] 404(b) [(eff. Jan. 1, 2011)] apply." In announcing its ruling, the court noted that Vital could testify, "as long as no comment is made that anything – or inference made that anything illegal happened on October 26th" unless defendant opened the door.

¶ 7 On October 20, 2014, prior to trial, the State sought clarification from the court concerning the motion *in limine*:

> "[State]: All the State is seeking to put in – and that's the State's understanding as well, Your Honor. All the State is seeking to put in is that Mr. Vital had the opportunity to observe two videos – one video occurred on the 26th, one occurred on the 29th – to help him identify the individuals that he saw on November 1st. And when he confronted

those individuals on November 1st and they fled the area, he contacted police and he provided the video of October 29th to officers which is charged in the bill of indictment. So he can testify to the video. He can testify as to how he identified the individuals from the video and that those are the individuals that appeared in his store on November 1st and subsequently led to their arrest. ***

THE COURT: Right. The only basis for this video identification from those other two is is why on November 1st did you ask questions of this particular individual."

¶ 8 The court clarified that Vital's testimony "explains why he on November 1st said that's why I believe that's that person." Ultimately, the jury would determine if the person in the video was defendant.

¶ 9 At trial, the State presented three witnesses: Vital and officers Shane Polnow and Thomas Jones.

¶ 10 A. Juan Vital

¶ 11 Vital testified through an interpreter that he is the general manager at Fiesta Market, a grocery store at 400 Chrysler Drive in Belvidere. Vital has training in loss prevention, including recognizing suspicious customers. Vital also has training in the video surveillance system and uses it in the regular course of his managerial duties. The store has 32 cameras, and the system stores up to 10 days of video. Prior to the current theft, Vital had encountered six persons engaged in such conduct. Only Vital and the store owner are authorized to work in the liquor area. To help track any thefts, they "[u]sually" face the shelves in the mornings, which means moving products to the front of shelves to ensure there are no empty spaces. He also keeps computer records.

¶ 12 On October 29, 2013, Vital noticed six to eight empty spaces on the shelves in the liquor area. He also found a grocery cart in the middle of a store aisle that contained paper towels and several cans, along with empty liquor boxes and some full bottles of alcohol. Based on what he found in the cart, Vital spoke with the cashiers, asking them if someone scanned the type of bottles that were missing. He also checked the electronic inventory. When asked if the missing bottles were listed as sold on the inventory, Vital replied, "No. They weren't sold. They were lost." After he discovered that no such bottles were sold, Vital checked the surveillance cameras.

¶ 13 Vital testified that something similar occurred on October 26, 2013. On October 29, he reviewed videos from October 26 and October 29. As to the October 29 video, he identified three African-American females involved in that occurrence: (1) an African-American woman with a lighter complexion, whom he later identified as defendant; she had a child with her who sat upright in her grocery cart; (2) a woman of medium height and a little heavy who had two (toddler-aged) children with her; and (3) a very thin woman with an infant in a baby carrier that she placed in a shopping cart. Vital also reviewed the October 26 video, and he testified that the same three females (with children) appeared on that video.

¶ 14 Addressing who removed the liquor bottles from the shelves, Vital testified that the October 29 video showed defendant enter the store with the cart, and her child was in the cart. She first went to the grocery department, selecting paper towels and cans. She then walked to the liquor department. In the video, defendant walked and checked various bottles and then turned around and selected two bottles of Remy Martin, a cognac, and placed them in her cart. Next, defendant selected about four bottles of Zero vodka and placed them in her cart. Afterwards, she walked to a "dead spot," in the store, *i.e.*, one outside of camera range. Defendant did not appear again on the surveillance video until the other women entered the store

with their children. This is the "exact same thing" that occurred on October 26—that is, the two women who entered the store later on the October 29 video did the same thing in the October 26 video. At some point, Vital observed defendant leave the store. He assumed that, prior to this, she gave the other women the bottles and the other women left. The thin woman who had the baby in a carrier left the store with a cart that contained the baby in its carrier and jackets. The heavy woman left the store with her two toddlers. Neither woman paid for any items. Two minutes later, defendant left the store, carrying her child and without her cart. She did not pay for any items. On October 29, Vital had alerted his employees that the group from October 26 might return to the store.

¶ 15 Later, on November 1, at around 10 a.m., Vital was in the produce area and noticed defendant enter the store with her child sitting in her shopping cart. He also had observed her in the October 26 and 29 videos. After she entered the store, Vital observed that defendant went to the grocery section and selected canned vegetables and placed them in her cart. She also selected ketchup and other items. Afterwards, she walked to the liquor department and started selecting a total of six liquor bottles. Vital alerted his cashiers.

¶ 16 After defendant selected the bottles, she "did the same thing" and waited for the other women to arrive. She did not move from the area. The same two women whom Vital had observed on the October 26 and 29 videos appeared again with their children. The thin woman had a cart that carried her baby in its carrier. At one point, the three women were together. The women saw Vital. Vital approached and asked them if everything was fine. They responded in raised voices, and the heavier one asked Vital "what's the problem?" The women separated. They abandoned the cart and quickly left the store. The thin one left first, alone; then, the heavier one left with her kids; finally, defendant picked up the child in her cart, and they left the

store. Vital grabbed the thinner woman's cart, which contained the merchandise and her infant in its carrier. Once in the parking lot, she asked Vital, " 'Where's my baby?' " Defendant retrieved the infant. The three women all left in the same car.

¶ 17 A cashier had contacted the police, and Vital stayed in the store and spoke to a police officer. One of the cashiers followed the women and checked a license plate number. The information Vital gave to police helped the officers identify the women. He told them what he observed that day and that the "exact same thing" had occurred on both October 26 and October 29.

¶ 18 Vital played the October 29 surveillance video for the officer. Afterwards, he accompanied the officer to the vehicle the police had stopped. There, Vital identified the three women, including defendant.

¶ 19 Subsequently, Vital provided police with a copy of the October 29 video. He also provided a receipt of the items that were taken on October 29, *i.e.*, two bottles of Remy Martin and four bottles of Zero vodka. The receipt, which was admitted into evidence, totaled $232.65.

¶ 20 The surveillance video was played for the jury, and Vital identified defendant and the other women, among other things. He pointed out a bag in the cart with the infant, testifying that he assumed that the stolen merchandise was in the bag.

¶ 21 On cross-examination, Vital testified that there were two empty liquor boxes (that had contained the cognac bottles) in the grocery cart on October 29. Addressing the bag that was in the car with the infant and carrier, Vital stated that he assumed that the stolen merchandise was in this bag because the women did not leave with any visible bottles, the missing bottles were never paid for, and he checked the shelves and computer inventory and concluded they were missing.

¶ 22 On re-direct, Vital testified that, on October 29, he recovered from the cart empty boxes and six to eight full bottles of alcohol. Before he located the cart with the empty boxes, he checked the store shelves and noticed several empty spots. Vital testified that it was an unusual amount of alcohol that was gone from the shelves. Customers do not typically purchase 9 or 10 bottles of alcohol at a time.

¶ 23 On November 1, the cart with the infant in it contained no merchandise. Afterwards, Vital located the other cart (defendant's cart) abandoned and discovered that groceries and alcohol were left in it. Thus, on that date, the three females left the store with no liquor.

¶ 24 B. Officer Shane Polnow

¶ 25 Belvidere police officer Shane Polnow testified that, on November 1, 2013, at about 10 a.m., he responded to a dispatch concerning a retail theft at Fiesta Market. The description of the individuals leaving the store advised three African-American females in a maroon Buick with no front license plate. An updated dispatch included the plate and registration numbers, all of which matched a vehicle Polnow had located near Pearl Street and U.S. 20. Polnow pulled over the vehicle and testified that the occupants matched the given description. There were three adults and four children in the car. Polnow identified the driver as Nakeeda Bell, the front passenger as Jasmine Bradley, and the adult in the rear seat as defendant.

¶ 26 During the stop, Sergeant Martin and Officer Thomas Jones arrived at the scene. Jones was the primary officer on the case. Shortly after arriving at the scene, he left to go to the Fiesta Market. Afterwards, Jones returned to the scene of the stop and spoke to the women in the car.

¶ 27 On cross-examination, Polnow testified that the Fiesta Market is located on Pearl Street and Chrysler Drive, just north of Route 20. When he first received the dispatch, Polnow was 13

or 14 blocks away, and it took him two to three minutes to drive to the area. When he arrived, he saw the maroon vehicle in the left-turn lane on Pearl Street.

¶ 28 C. Officer Thomas Jones

¶ 29 Belvidere police officer Thomas Jones testified that, on November 1, 2013, shortly after 10 a.m., he was dispatched to the Fiesta Market for a retail theft. On his way, he received updates about the incident, including a description of the individuals involved, their general direction of travel, and a license plate with an associated address. Based on the address, Jones drove to Appleton Road and Route 20, not to the Fiesta Market. Sergeant Martin drove there separately.

¶ 30 Officer Polnow had stopped the vehicle. When Jones and Martin arrived at the scene, Jones observed a maroon Buick with a temporary plate that matched the description of the suspect vehicle that had been observed leaving the Fiesta Market. Three African-American females occupied the vehicle, as did several children. Jones did not speak to the occupants. Instead, after conferring with Martin, he left the scene and drove to the Fiesta Market. There, he spoke with Vital.

¶ 31 Vital described the incident to Jones. He also told Jones that the same individuals were involved in "occurrences" on October 26 and 29. Vital described to Jones what had occurred on the earlier dates and what had happened that day. He also played for Jones the October 29 surveillance video. Jones testified that the video depicted the same individuals that he observed in the stopped vehicle on November 1.

¶ 32 Jones took Vital to the scene of the traffic stop, where Vital identified the three women as the offenders. Subsequently, Vital provided a written statement to police and a copy of the October 29 video. The October 26 video was no longer available because it had been recorded

over in the store surveillance system. Also, Vital did not provide a copy of the November 1 video. He did give Jones a receipt reflecting the value of the stolen liquor: $232.65.

¶ 33 The State rested. Defendant presented no evidence.

¶ 34 During closing argument, the State argued that, "What [Vital] observed on October 26th is now taking place on October 29th." The prosecutor also stated, "And you know by what Juan told you he observed on October 26th, he's telling you what could have from his inference occurred on October 29th out of the view of the cameras in the dead spot." Finally, the State argued that, although there was no video of the exchange on October 29, circumstantial evidence did support this inference: "The conduct of the defendant on November 1st and the conduct of the defendant on October 26th and what [Vital] told you happened on those dates and the exact method in which on every one of those dates these thefts occurred. That is the circumstantial evidence which supports the defendant knowingly took possession of alcohol with the intent to deprive Fiesta Market of that liquor or the benefit of that liquor."

¶ 35 The jury found defendant guilty of retail theft. The trial court sentenced defendant to 120 days in jail and 30 months' probation. She was also ordered to pay $360.62 in restitution. The court denied defendant's motion to reconsider sentence. Defendant appeals.

¶ 36 II. ANALYSIS

¶ 37 B. Ineffective Assistance of Counsel

¶ 38 Defendant argues first that defense counsel provided ineffective assistance, where he failed to object to Vital's description of the October 26 "incident," despite having been granted a motion *in limine* to exclude such evidence, and where he failed to object to the State's closing arguments that implored the jury to consider that evidence as circumstantial evidence of defendant's guilt for the October 29 incident.

¶ 39 Defendant asserts that, given the dearth of evidence relating to the happenings on October 29, the verdict was likely the product of Vital's testimony about what he allegedly witnessed on the October 26 video. She notes that the State argued that the jury should infer that a theft occurred on October 29 from "what [Vital] told you he observed on October 26th." Defendant notes that the trial court specifically excluded any evidence about what occurred on October 26 when it granted defendant's motion *in limine*, precluding any "inference *** that anything illegal happened on October 26th." Under these circumstances, defendant argues, defense counsel was ineffective when he failed to object to Vital's testimony about October 26 and failed to object to the State's invocation of that evidence during closing arguments. Accordingly, she asks that we reverse her conviction.

¶ 40 To show ineffective assistance of counsel, a defendant must demonstrate that "his [or her] attorney's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different." *People v. Patterson*, 192 Ill. 2d 93, 107 (2000). A "reasonable probability" is defined as "a probability sufficient to undermine confidence in the outcome." *Strickland v. Washington*, 466 U.S. 668, 694 (1984). A defendant must satisfy both prongs of the *Strickland* test, and a failure to satisfy any one of the prongs precludes a finding of ineffectiveness. *Patterson*, 192 Ill. 2d at 107.

¶ 41 "[A] reviewing court will be highly deferential to trial counsel on matters of trial strategy, making every effort to evaluate counsel's performance from his or her perspective at the time, rather than through the lens of hindsight." *People v. Perry*, 224 Ill. 2d 312, 344 (2007). "[I]n order to establish deficient performance, the defendant must overcome the strong presumption that the challenged action or inaction may have been the product of sound trial strategy.

[Citations.] Matters of trial strategy are generally immune from claims of ineffective assistance of counsel." (Internal quotation marks omitted.) *People v. Manning*, 241 Ill. 2d 319, 327 (2011).

¶ 42 As to deficient performance, defendant contends that there could not have been any conceivable trial strategy behind allowing the State to introduce evidence the court had already excluded or in allowing it to argue that the evidence was indicative of guilt. The motion *in limine* precluded evidence of October 26 theft unless defendant opened the door. The court allowed Vital to testify only for the purpose of identification. At trial, however, Vital testified about the "incident" he observed on the October 26 video. Defendant also notes that Vital testified that "the exact same thing" occurred on October 26 and 29. By giving this testimony, defendant urges, Vital was violating the court's ruling that no comment or "inference" be made "that anything illegal happened on October 26th." In defendant's view, it was objectively unreasonable for counsel not to object to this evidence, as the court had ruled that it was inadmissible.

¶ 43 The State responds that defendant takes Vital's testimony out of context. It points to one occasion where Vital addressed the group's pattern: "She was the first person that did the same thing. She would get there, she would wait for the other group, she would give it to the other group. The other group would take off. She would leave two minutes afterwards, and usually they would get there in one vehicle and leave in one vehicle." Vital gave this answer following several questions as to whether this pattern of conduct was consistent with what he observed in the October 26 video. We disagree with the State that, in context, Vital's response related solely to the topic of identification. In our view, defense counsel should have raised an objection.

¶ 44 The foregoing was not an isolated event. Later in the questioning, during Vital's description of the co-defendants' quick exit from the store and the fact that they all got into the same car, Vital stated that he told the police what he observed that day: "Yes; the exact same thing." Then, the following exchange occurred:

> "Q. And when you say the exact same [thing], does that mean you're talking about what occurred on October 26th and October 29th?
>
> A. Yes."

The foregoing exchange occurred without any objection from defense counsel.

¶ 45 We believe that defense counsel's failure to object on two occasions during Vital's testimony constituted deficient performance because the testimony clearly violated the motion-*in-limine* ruling. The motion precluded any testimony concerning the contents of the October 26 video other than for identification purposes and unless defense counsel opened the door. The trial court, in announcing its ruling, noted that Vital could testify "as long as no comment is made that anything – or inference [is] made that anything illegal happened on October 26th" unless defendant opened the door. Clearly, the two exchanges above violated this ruling. Defendant did not view the October 26 video and could not challenge Vital on its contents.

¶ 46 Addressing prejudice, defendant argues that the evidence was clearly prejudicial as shown by the State's closing arguments. The prosecutor, she notes, relied entirely on Vital's description of what occurred on October 26 to infer what occurred on October 29, even though it was impossible to challenge Vital's description because the October 26 tape had been lost. Defendant argues that it was detrimental to defendant's case for trial counsel to allow the evidence to be presented and to allow the State to refer to it during closing arguments without any challenge. We agree.

¶ 47 A defendant suffers prejudice from the deficient performance of defense counsel if there is a "reasonable probability" that, but for the deficient performance, the outcome of the proceeding would have been more favorable to the defendant. *People v. Minniefield*, 2014 IL App (1st) 130535, ¶ 71. To establish a "reasonable probability," a defendant has to do more than show that the deficient performance had "some conceivable effect on the outcome." *Strickland*, 466 U.S. at 693 (1984). A defendant need not go so far as to show that the deficient performance "more likely than not altered the outcome." *Id.* Rather, a "reasonable probability" is "a probability sufficient to undermine confidence in the outcome." *Id.* at 694. The closer the case is, the more likely that defense counsel's deficient performance altered the outcome. See *People v. Butcher*, 240 Ill. App. 3d 507, 510 (1992).

¶ 48 The evidence was closely balanced, and we agree with defendant that it was detrimental to her case for defense counsel to allow the evidence to be presented on the two occasions mentioned above and, further, to allow the State to cite to it, without any challenge, during closing argument. During closing argument, the State argued that "What [Vital] observed on October 26th is now taking place on October 29th." The prosecutor also stated, "And you know by what Juan told you he observed on October 26, he's telling you what could have from his inference occurred on October 29th out of the view of the cameras in the dead spot." Finally, the State argued that, although there was no video of the exchange on October 29, circumstantial evidence did support this inference: "The conduct of the defendant on November 1st and the conduct of the defendant on October 26th and what [Vital] told you happened on those dates and the exact method in which on every one of those dates these thefts occurred. That is the

circumstantial evidence which supports the defendant knowingly took possession of alcohol with the intent to deprive Fiesta Market of that liquor or the benefit of that liquor."[1]

¶ 49 The prosecutor's comments invited the jury to infer that the October 26 conduct was circumstantial evidence of what occurred on October 29 and, further, encouraged the jury to consider the course of conduct on all three dates as circumstantial evidence of what occurred on October 29. This was detrimental to defendant's case because this evidence underscored a pattern of suspicious behavior and, because she did not view the October 26 video, she could not challenge Vital's testimony. This was a close case. There were no eyewitnesses to the crime, and Vital did not testify that he observed defendant interacting with the other women. Clearly, defendant was prejudiced by the testimony and comments.

¶ 50 In summary, we conclude that defendant received ineffective assistance of trial counsel and we reverse her conviction and remand for a new trial.

¶ 51 B. Sufficiency of the Evidence

¶ 52 Defendant also argues that the evidence was insufficient to sustain her conviction. Although we are reversing her conviction based on ineffective assistance of counsel, we must consider the sufficiency of the evidence to determine whether retrial is barred by double jeopardy. *People v. Willis*, 349 Ill. App. 3d 1, 23 (2004). The double jeopardy clause does not preclude a second trial where a defendant's conviction has been set aside because of an error in the proceedings leading to his or her conviction. *People v. Olivera*, 164 Ill. 2d 382, 393 (1995). "If the evidence presented at the first trial, including the improperly admitted evidence, would have been sufficient for any rational trier of fact to find the essential elements of the crime proven beyond a reasonable doubt, retrial is the proper remedy." *People v. McKown*, 236 Ill. 2d

[1] There was no theft on November 1.

278, 311 (2010). For the following reasons, we conclude that the evidence was sufficient to establish defendant's guilt beyond a reasonable doubt. Therefore, a retrial does not violate the defendant's right against double jeopardy. We do not, however, express any opinion concerning defendant's guilt or innocence. *People v. Sutton*, 349 Ill. App. 3d 608, 621 (2004).

¶ 53 Defendant argues that the State failed to prove beyond a reasonable doubt that a retail theft occurred on the charged date, where it failed to show (through eyewitness testimony or video) that any inventory was taken on October 29, or who took the missing liquor.

¶ 54 When reviewing a challenge to the sufficiency of the evidence, a reviewing court considers whether, viewing 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. (Emphasis in original.)' " *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). A reviewing court must allow all reasonable inferences from the record in the State's favor; however, we may not allow unreasonable inferences. *Jackson*, 443 U.S. at 319. The fact finder's decision to accept testimony is entitled to great deference, but is not conclusive and does not bind a reviewing court. See *People v. Smith*, 185 Ill. 2d 532, 542 (1999).

¶ 55 As relevant here, "a person commits retail theft when he or she knowingly:

> (1) Takes 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 2016).

¶ 56 Defendant argues that the evidence concerning October 29 did not establish *who* took the liquor bottles or *when* they were taken. She contends that Vital never saw anyone take liquor from the store. His testimony established that he checked his inventory on October 29, and it showed bottles of liquor were "lost" that same day. The video does not show any liquor bottles leaving the store, and there were no eyewitnesses. Defendant urges that there was no evidence that anything was stolen on October 29. The bottles may have been lost before then. Vital, she notes, did not testify what time his suspicions were piqued, nor did he specify what liquor remained in the abandoned cart. Defendant notes that the video depicts defendant putting liquor bottles in her cart, but it also shows her walking out of the store with only her small child. The video also shows the co-defendants, she notes, entering and leaving the store, but there are no visible liquor bottles. Also, defendant notes that there is no video of her interacting with the co-defendants on October 29. Defendant contends that Vital relied entirely on the video, as he had not witnessed anything in person. Accordingly, she argues, the deficiencies in the video are fatal to the State's case because it is impossible to say who took the lost bottles or when. In defendant's view, while a crime may have been committed, the State's evidence did not prove who committed it.

¶ 57 Defendant relies on *People v. Garrett*, 401 Ill. App. 3d 238, 249 (2010), where the reviewing court reversed a conviction on the basis that there was no evidence supporting a first-degree-murder conviction under accountability principles. Specifically, there was no evidence that a shot was fired or that the fatal shot was fired from the co-defendant's gun. *Id.* In *Garrett*, the defendant was the getaway driver in an attempted armed robbery of a store where an employee was found dead. The *Garrett* court noted that the charging document required the State to prove that one or more of the named defendants shot and killed the victim during the

attempted armed robbery. *Id.* at 246. The court held that the jury could not have found the requisite element of causation because there was a "total absence" of evidence proving or even suggesting who caused the victim's death. *Id.* at 247. Even though the evidence demonstrated that two co-defendants entered the store, one of which was in possession of a weapon, the court observed that there was no evidence suggesting that the recovered gun was the murder weapon or that any weapon at all was fired contemporaneously with the entry or presence of the defendant's group within the store. *Id.* No one testified that they had even heard a gunshot. *Id.* The court, therefore, held the proof lacked the missing link of causation. *Id.* The court stated, "it is not that there is conflicting evidence of the murder (which a trier of fact could resolve), but instead a complete lack of evidence." *Id.* The court pointed out that there was no physical evidence or testimony that linked any of the criminal group with the shooting death or that one of them had even fired a gun on the day of the incident. *Id.* The court reasoned that, even in light of the considerable deference afforded to the trier of fact, the evidence was insufficient to prove the defendant accountable. *Id.* at 249. Because there was no evidence that the victim died as a result of the predicate offense, there was thus no evidence that the defendant shared a common design with whoever shot the victim, leading to a fatal lack of proof of causation. *Id.* at 248. The evidence only showed that the defendant "shared a common design with those that committed the attempted armed robbery, for which he could have been held accountable, but not the murder." *Id.*

¶ 58 Here, the State argues that, unlike *Garrett*, this case involves several pieces of evidence connecting defendant to the theft, including: her being seen on camera putting the liquor in her cart; no other person grabbing the same type of liquor bottles from the liquor aisle; her cart no longer containing all of the liquor she put in it when she leaves the store without making any

purchases; and her interactions with the other two individuals who entered the store after her, even though they arrived in the same vehicle. In the State's view, *Garrett* is distinguishable because it was based on no evidence being presented to the jury. This case, in contrast, has multiple pieces of evidence presented to the jury.

¶ 59 We agree with the State that the evidence was sufficient to sustain defendant's conviction. Vital's testimony showed that, on October 29, he noticed six to eight empty spaces on the liquor shelves and found a grocery cart that contained paper towels, cans, and empty boxes of and some full bottles of alcohol. After he discovered that no such bottles were sold (by asking the cashiers and checking inventory), he reviewed the surveillance video. In the October 29 video, Vital observed three African-American females: one heavier woman with two toddler-aged children, a thinner woman with an infant in a baby carrier that she placed in a shopping cart, and defendant with a child who sat up in a shopping cart. The video showed defendant enter the store with the child in her cart. She first went to the grocery department, where she selected paper towels and cans, and then went to the liquor department, where she first checked various bottles and then turned around and selected two bottles of Remy Martin cognac and four bottles of Zero vodka. Afterwards, defendant walked to a video "dead spot." The two other women entered the store with their children. Vital assumed that, while in the dead spot, defendant gave the other women the bottles, and he testified that there was a bag in the cart with the infant; he believed that the stolen liquor was in the bag. The video shows the other women leaving the store, including the thinner woman, who had the baby in a carrier and left the store with a cart that contained the baby in its carrier and jackets. Two minutes later, defendant left the store, carrying her child and without her cart. Neither defendant, nor the other two women,

paid for any items. Again, Vital later discovered in defendant's abandoned cart empty liquor boxes and full bottles of alcohol; he never located the missing bottles.

¶ 60 Vital identified defendant as the person who had entered the store on October 26 and went to the liquor aisle and that the "exact same thing" had occurred on both October 26 and 29 with the same group of women. On October 29, after defendant and the other women had left, Vital alerted his employees that the group from October 26 might return to the store.

¶ 61 On November 1, 2013, Vital saw defendant enter the store and observed her select groceries before she walked to the liquor aisle, selecting liquor. Vital alerted his cashiers and watched defendant wait for the other women. The same women from the October 26 and 29 videos appeared again with the children. At one point, the women were together and noticed Vital. They quickly left the store, with the thinner woman leaving her infant in her cart. All three women entered the same vehicle. After contacting the police, Vital identified defendant as one of the vehicle occupants.

¶ 62 We conclude that this evidence was sufficient to sustain defendant's retail-theft conviction. Contrary to defendant's assertion, the evidence established that the missing liquor was taken on October 29 and that defendant's group took it. The pattern of defendant's and her co-defendants' store visits were more than merely suspicious, and the only reasonable inference of guilt points to defendant's group. Unlike *Garrett*, there is a sufficient link here between the missing liquor and defendant's culpability. The video depicted defendant selecting, among others, two bottles of boxed cognac, the empty boxes of which were later discovered in her abandoned cart. The only reasonable inference from this evidence is that the liquor was taken that day. As to *who* took the alcohol, no liquor was ever recovered and Vital did not testify that he saw defendant or the other women take it. However, after following the same arrival and

shopping pattern as on October 26 and 29, the women quickly left the store on November 1 when confronted by Vital, without the infant and after responding in an irritated manner. These actions reflect their consciousness of guilt. Furthermore, Vital's testimony concerning the dead-spot activities was more than mere speculation. Defendant's and her group's pattern of activity in the store over two prior dates, along with the group's reaction on the third occasion upon being confronted by Vital sufficiently allows the (only) reasonable inference that, once in the video dead spot, the women placed the stolen merchandise in the thinner woman's bag, which she later carried out of the store.

¶ 63 III. CONCLUSION

¶ 64 For the reasons stated, the judgment of the circuit court of Boone County is reversed and the cause is remanded for a new trial.

¶ 65 Reversed and remanded.